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S. 1239, AIR TRAFFIC MANAGEMENT SYSTEM
PERFORMANCE IMPROVEMENT ACT OF 1995

P11-72

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HEARING
BEFORE THE
SUBCOMMITTEE ON AVIATION
OF THE
COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE
ONE HUNDRED FOURTH CONGRESS
FIRST SESSION

OCTOBER 12, 1995

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ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

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[NOTE: At the time of printing, May 13, 1996, no response to these questions had been received.]**

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[NOTE: At the time of printing, May 13, 1996, no response to these questions had been received.]**

HEARING ON S. 1239, THE AIR TRAFFIC MANAGEMENT SYSTEM PERFORMANCE IMPROVEMENT ACT OF 1995

THURSDAY, OCTOBER 12, 1995

U.S. SENATE,
SUBCOMMITTEE ON AVIATION OF THE COMMITTEE ON
COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m., in room SR-253, Russell Senate Office Building, Hon. John McCain (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Mike Reynolds, counsel, Richard Mercadante, AIAA Fellow; and Samuel E. Whitehorn, minority senior counsel.

OPENING STATEMENT OF SENATOR MCCAIN

Sen. McCain: Good morning. This is our third hearing in the series of hearings examining the FAA reform proposals.

We focused, in particular, on how to develop a direct, effective, and safety-conscious relationship between the FAA, which provides agency and air traffic control services, and the users, the ATC system, and other FAA services.

I strongly believe that the Air Traffic Management System Performance Act which Senators Ford, Hollings, and I developed with the significant assistance and support of the Administration is the one correct proposal that could simultaneously establish the relationship between the FAA and its users and enhance the safety and efficiency of the ATC system.

Today we will hear testimony from representatives of several air carriers and flight attendants whose views in support of these ATC systems users are very important in attaining meaningful FAA reform.

Senator Ford, I am going to make my complete statement part of the record.

Senator FORD. I will not object to that.

Senator MCCAIN. I just want to say, before I ask you if you have any opening comments—you know, the reality of the situation is that Congress has decided, not unanimously, that we will balance the budget by the year 2002. If we are going to balance the budget by the year 2002, as the Budget Committee budget resolution dictates, then the Appropriations dictated that the Federal Aviation Administration, the air traffic control system, and all those bu-

reaucracies associated will have to be financed without the use of general revenues.

What Senator Ford and Senator Hollings and I and the Administration have tried to come up with is a way of carrying out that mandate.

Now, if somebody has a better idea as to how to achieve that goal, I do not think that there is anybody who would be more receptive than the three individuals right here who worked very hard with the Administration in trying to come up with this proposal.

If somebody has got a better idea of achieving the mandate that has been dictated to us. I do not believe—I have asked my friend, Senator Ford—I do not believe that we would be doing this, at least this aspect of it, if it were not for those mandates.

We certainly would, hopefully, be moving forward with allowing the FAA to have the kind of latitude which is necessary in order to carry out procurement reform, personnel reform, et cetera.

But no one likes to take on this issue. I am intrigued by now some of the proposals by some segments of the industry who are now in favor of aviation fuel tax increases. I am, frankly, flabbergasted, because all I have ever had is a long line of people in my office telling me how devastating that would be to the airline industry.

So I would ask our witnesses this morning for their comments and views. Obviously, we are very interested in that or we would not be having them as witnesses.

But if they are in opposition to this legislation, I would hope that they would be able to come up with a better proposal. This committee would certainly give it the most serious consideration.

[The prepared statement of Senator McCain follows:]

STATEMENT OF SENATOR JOHN MCCAIN, CHAIRMAN

This is our third hearing in a series of hearings examining FAA reform proposals. We have focused in particular on how to develop a direct, effective, and safety-conscious relationship between the FAA, which provides agency and air traffic control services, and the users of the ATC system and other FAA services. I strongly believe that the "Air Traffic Management System Performance Act," which Senator Ford, Senator Hollings, and I developed with the significant assistance and support of the Administration, is the one current proposal that could simultaneously establish the relationship between the FAA and its users and enhance the safety and efficiency of the ATC system.

During these hearings, I have been encouraged by the intense discussion about various aspects of FAA reform. By hearing from and speaking with so many system users and others affected by FAA reform, such as the Department of Transportation, the FAA, general aviation, business aviation, aircraft manufacturers, air traffic controllers, air carriers, airports, and other Members of Congress, it is clear to me that FAA reform can happen soon and can make a significant difference.

Today, we will hear testimony from representatives of several air carriers and flight attendants. The views and support of these ATC system users are very important in attaining meaningful FAA reform. Our legislation attempts to make the distribution of ATC system costs more fair for these and all other system users, and gives such users an important voice in developing a better system.

You are all aware that our commitment in Congress to eliminate the federal budget deficit is extremely important. It also means, however, that we face the difficult challenge of finding creative and workable solutions to ensure that essential government services, such as safe air traffic management, not only continue, but are significantly improved. It is clear that in the very near future, transportation spending and particularly the FAA's budget will be cut, at the same time that the FAA and the ATC are in critical need of modernization.

Our legislation not only recognizes this, but in head-on fashion, it provides financing reforms that will enable the FAA to make those who use the system pay their

fair share for such use. Moreover, when the system is fully implemented and replaces the current funding system, taxes paid by many Americans would no longer subsidize the system. In short, our bill would put a stop to the current system in which taxpayers foot the bill in an arbitrary way; instead, those who use the systems' services would pay their fair share.

Specifically, S. 1239 requires the FAA to develop, in the near term, new performance-based fees and fee systems for certain non-ATC services provided by the FAA. Also in the near term, the FAA will enter into an agreement with DoD on reimbursement for services provided to DoD by the FAA. In the longer term, the bill requires the FAA to develop a new ATC fee system based on efficient and safe ATC system performance. This new ATC fee system would eventually replace the current system, meaning that the passenger ticket tax and other trust fund excise taxes would be phased out. This was done based on a recognition that the current ticket tax approach to funding the FAA does not provide any incentive for collaboration between the ATC system users and the system provider—that is, the FAA. In this era of budget cuts, such collaboration is essential to achieving improved ATC system performance without compromising safety. Ultimately, as a result of this new, more responsible funding system, not only would the ATC system be more efficient and safe, but the FAA would not face a funding shortfall. This is a win-win result.

I have heard the criticisms of the funding provisions in our bill. *[In fact, I understand that most of the last two House hearings on FAA reform have focused on those provisions of our bill. Given that, I wonder if today, out of fairness, we should provide an opportunity for discussion on the House bill instead.]* Frankly, I have listened to the concerns of certain aviation industry groups about making fundamental changes in the way that the FAA is funded, and we will continue to work closely with all of the aviation industry to address these concerns.

Yet, I remain firmly convinced that funding reform is the critical component of meaningful FAA reform, and that our bill can achieve such reform in a responsible way that benefits all parties affected by FAA reform. Yes, I acknowledge that there is nearly unanimous agreement that imminent changes must be made at the FAA in the areas of procurement, personnel, and management. In fact, there are many similarities between our bill and the Duncan/Lightfoot bill in these areas, and enacting these changes will help significantly in making the agency more efficient and enabling it to save money. Our legislation, however, goes a necessary step further, and we must take that step soon. Without doing so, the FAA will face a funding shortfall that could detrimentally affect the services the FAA provides and increase costs; yet the system users will have no voice in the FAA's efforts to find a solution.

The bottom line is that our legislation lays the groundwork for the development of a better, more efficient FAA and a safer ATC system. Not only would the FAA be able to operate more autonomously and find substantial relief from the federal government's burdensome procurement and personnel rules which will bring about sorely needed improvements in efficiency and an end to the unconscionable overruns, but the agency would operate under a financing system that makes those who use the system pay their fair share for using it.

Senator MCCAIN. Senator Hollings.

STATEMENT OF SENATOR HOLLINGS

Well, I apologize for being a little tardy. But I really came to support your leadership and Senator Ford's leadership. We have been working on this for years and years and years.

And right to the point, the airport and airways trust fund itself has been, as we all know in the airline industry, been coffered off by the Congress and the Administration in trying to balance the budget.

I also want to say that we have not directed where the airport improvement funds should be spent. I always looked at a new FAA administrator, and have said will you give me at least a \$2 billion allocation for—which was realistic for allocation to the various airports and their development.

And do not put a single grant in South Carolina. I just want to get what was originally conceived when we set up the airport and airway trust fund taxes. This is not pork.

So we are back again. Everybody is retrenching. We understand that. We will still be trying to get all of the moneys from those particular excise charges that you in the industry have supported.

We have all worked together. We just ask for your understanding here, given the dilemma that we all face with respect to our restricted budgets.

But let me commend Senator McCain, our Chairman, and Senator Ford, who have been working on this for years.

Senator MCCAIN. Thank you very much, Senator.

[The prepared statement of Senator Hollings follows:]

STATEMENT OF SENATOR HOLLINGS

We have now had three hearings on FAA reform, two specifically on S. 1239, the Air Traffic Management System Performance Improvement Act of 1995. Since the bill was introduced on September 13, there has been a vigorous debate on funding for the FAA.

No one questions that we need a safe and efficient air traffic control system. No one questions that the FAA must be supported. No one questions that the controllers work hard to make sure the system is safe. No one questions that the FAA is improving the implementation of its programs and is managing its budget more efficiently.

Some, however, question the FAA's asserted need for \$59 billion through FY 2002. S. 1239 should not be viewed solely as a revenue raiser, merely to fill the FAA's coffers. Without a thorough reexamination of the FAA's mission, it is difficult to ask industry to pay more.

The industry was told when the Airport and Airway Trust Fund was created that the money raised for the Trust Fund would go to the FAA, and for the most part it has. The problem arises for the future, not the past. The budget resolution assumes that only \$47 billion will be available for the FAA through FY 2002. That leaves an enormous gap. Even if we can spend all of the Trust Fund receipts, estimated to be \$43 billion through 2002, we will still need more money for the FAA.

Some form of funding, either a fee system or any other method that works, must be developed, and developed in time for inclusion in the FY 1997 budget.

There is obviously a lot of work that remains to be done on this bill before it can be considered by the Committee. I know the witnesses today will add to the debate and give us valuable advice on improving the bill.

Senator MCCAIN. Senator Ford.

STATEMENT OF SENATOR FORD

Senator FORD. Mr. Chairman, we have already had, as you said, 2 days of hearings on what we refer to as FAA reform—and I think that is a little “r” rather than a capital “R”. But we are moving in that direction. We have a distinguished group of witnesses, at the last hearing as well as today.

You know, we can debate reform and fund the FAA for a long, long time. I want to make sure that whatever we create improves safety and does not harm it in any way. So as we reform the FAA, we must do it carefully.

And we cannot create disincentives to use the system. We cannot send this funding to the states as a block grant and have the states oversee it, so this is one, I believe, that has to be done here in Washington.

And as I said, safety is not only our No. 1 priority, but it is, for the witnesses today, their No. 1 priority.

And I say, Mr. Chairman, and to my friend, Senator Hollings, over the years I have worked with all of you and with every organization involved in this reform effort. Many of the individuals that

we are visiting with today and in the past are still ones that I have worked with.

Having worked with them, I believe we can arrive at a solution that will be—maybe not make everybody happy, but one that is acceptable.

So, coming from a state that refused Henry Clay, the great compromiser, who said that compromise is a negotiated hurt, we will at some time hurt, get down to what is right and what is wrong.

I ask that my total statement be included in the record, as if given. Mr. Chairman, I thank you for your time.

Senator MCCAIN. Without objection.

[The prepared statement of Senator Ford follows:]

STATEMENT OF SENATOR FORD

I will make my opening statement short. We have already had two days of hearings on FAA reform and we have a distinguished group of witnesses here today.

As all of you know, we can debate how to reform and fund the FAA for a long time. I want to make sure that what ever we create improves safety, and does not harm it in any way.

After hearing about one air traffic control outage after another, it is all to clear that the system needs to be repaired. As we reform the FAA, we must do it carefully. We can not create disincentives to use the system. We can not price any segment of the industry out of the aviation community. We can not let one segment of the industry control the fate of another segment. That is not the purpose of FAA reform. However, each part of the aviation community must realize that it must share in the pain. There are many difficult decisions that we must confront, as a Committee and as an industry.

S. 1239 asks the users to pay more to support the entire FAA. The users have suggested that we look first at what exactly does the FAA need. The FAA says it needs \$59 billion from FY 1997 through FY 2002. When I get my bill in a restaurant, I make sure I know what I am paying for before I pay the check. The industry has raised a fair question and it must be answered. Many of the users have suggested that the general fund contribution must continue. We must review that issue as well.

The airport community needs to be brought into the process of reforming the FAA. They too must address what is really needed to provide safe and efficient airports. I realize that this bill does not directly address the needs of our nation's airports. However, any FAA reform ultimately must recognize that safety demands the best airports we can afford. I caution some airports, however, that if we are to figure out how to fund the FAA, and ask the users to pay more, airports like LAX can not take aviation money downtown. If there is excess aviation generated money, it must be spent to make the air transportation system safer.

I know the bill will need changes to be considered favorably by this body. At this point, the bill represents a starting point for the debate. I hope that we will continue to talk, and listen, to the concerns being raised by the industry and the unions. There have been a number of valuable and important issues raised over the last several weeks.

I look forward to listening today to Mrs. Hallett, and all of our witnesses today.

Senator MCCAIN. Our first panel of witness is Mr. Robert Crandall, the President and CEO of American Airlines, Mr. William Franke, who is the Chairman and CEO of America West Airlines, and Mr. Herb Kelleher, the Chairman of the Board and President of Southwest Airlines.

Welcome, gentlemen. Mr. Crandall, do you wish to go first?

STATEMENT OF ROBERT L. CRANDALL, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN AIRLINES

Mr. CRANDALL. Thank you, Senator, Mr. Chairman, Senator Ford, Senator Hollings.

I am glad to be here to discuss this bill. We think it is a very important bill, because we think if we are going to have a system that is capable of handling the nation's air traffic for the rest of this decade and into the next century, that the change is required.

We think improving the system depends on three things: first, identifying a reliable source of funds; second, enabling the FAA to acquire needed equipment both quickly and efficiently; and, finally, giving the FAA the ability to hire and train and compensate ATC personnel in an appropriate way.

I think it is important to keep in mind that optimizing safety and improving efficiency are complimentary goals.

Today's air traffic control system is fundamentally unchanged from what was in place before the economic deregulation of the airline industry.

It is safe, but the system has failed to meet the challenge of change. Although the men and women in the FAA's air traffic control service are handling record amounts of traffic, the nation's air travelers are plagued by delays that have many adverse consequences for the air carriers, for their customers, and for the communities they serve.

Now, one of the questions which arises whenever ATC reform is discussed is whether sufficient funding to make the needed changes is available.

The answer, I think, is clearly yes for an improved system will yield huge productivity dividends. I am absolutely certain that the cost of such a system, net of productivity improvements, will be less than the cost of today's.

Thus, assuming the needed changes are effectively implemented, total costs—that is, system costs plus delay costs—will go down and everyone will be better off.

And in the event that—if more money is needed to fund the required changes, this bill provides a means to raise the needed dollars.

I do hope, however, that you will not permit the imposition of new fees unless several conditions are met.

First, every dollar of aviation fees and taxes should be used for aviation purposes.

Second, those responsible for the ATC system should establish a clear need for every dollar assessed.

Third, everything possible should be done to reduce costs and improve efficiency.

Fourth, each expenditure should generate a benefit which exceeds its costs.

And, finally, all of that should be certified by an independent board that has access to all the relevant data.

In my view, this bill strikes a positive note by linking financing with output. It gives both system providers and system users a stake in improving productivity.

Now, as this funding dilemma is worked out, we think it is important that air carriers not be asked to bear costs that are caused by other system users. In one way or another, each category of user should bear the costs of its system use.

But we see nothing wrong allocating to the public, by way of general fund, whatever portion of system costs cannot realistically be borne directly by the users.

Therefore, if the Congress decides that the public interest dictates against imposing general aviation costs directly on its users, we would have no objection to having Congress contribute from the general fund whatever amount is required to pay general aviation's share of the system's cost.

In addition to addressing the financing dilemma, your bill mandates major changes to the procurement, personnel, and regulatory problems now faced by the FAA. We support those reforms, which we think are essential if the ATC's shortcomings are to be overcome.

In our judgment, true reform requires an integrated set of changes that will make the FAA's ATC activities more responsive to market forces and will give both users and providers a stake in achieving improved efficiency and higher levels of safety.

Now, your bill leaves many of the details of the proposed reforms to be worked out during implementation. Although we have some anxiety about that, harking back to your introductory comments, Mr. Chairman, we cannot think of any better way to move forward.

The details of the reform system and the financial mechanisms to support it should be designed in consultation with all of the interested parties and that effort should be guided by people who are expert in accounting and management and ATC procedures.

Mr. Chairman, this bill set us on a course to fix the problems that have bedeviled the FAA's efforts to optimize the performance of our country's ATC system. We congratulate you and your colleagues on 1239.

We think you have drafted an excellent bill, and my colleagues and I at American pledge our full support as you and your staff move toward passage and implementation.

Senator MCCAIN. Thank you, Mr. Crandall.

[The prepared statement of Mr Crandall follows:]

TESTIMONY OF ROBERT L. CRANDALL
Senate Commerce Committee
Subcommittee on Aviation

October 12, 1995

Mr. Chairman, Senator Ford, it is a pleasure to be here with you today to discuss the Air Traffic Management System Performance Improvement Act of 1995.

Your bill is important, because we need to act now if we are going to have a system capable of handling the nation's air traffic in a safe and efficient way during the remainder of this decade and into the 21st Century. Improving the nation's ATC system depends on: (1) identifying a reliable source of adequate funds; (2) enabling the FAA to acquire needed equipment quickly and efficiently; and (3) hiring, training, and compensating ATC personnel appropriately.

Optimizing safety and improving efficiency are complementary goals. Air carriers depend on the FAA just as motorists depend on a traffic management system which includes traffic lights, stop signs, and street alignments. We all want the traffic management system to provide a safe driving environment, but we also want its parts to be well coordinated so that automobile trips can be completed as quickly as possible. And when traffic conditions change, we expect the municipal government to respond to those changes. We expect the same from the ATC system and those running it.

Today's air traffic control system is fundamentally unchanged from what was in place before the economic deregulation of the airline industry. The system is safe, but has failed to meet the challenge of change. Although the men and women in the FAA's Air Traffic Service are handling record amounts of traffic, the nation's air travelers are plagued by delays that have many adverse consequences for the nation's air carriers, their customers, and the communities they serve.

One of the questions which arises whenever ATC reform is discussed is whether sufficient funding to make the needed changes is available. The answer is clearly "yes," for an improved system will yield huge productivity dividends and I am 100 percent certain that the cost of such a system, net of productivity improvements, will be less than the cost of today's. Thus, assuming the needed changes are effectively implemented, total costs --

that is, system costs plus delay costs -- will go down and everyone will be better off.

In the event more money is needed to fund the required changes, this bill provides a means to raise the needed dollars. I hope, however, that you will not permit the imposition of new fees unless:

1. Every dollar of aviation fees and taxes are used for aviation purposes;
2. Those responsible for the ATC system establish a clear need for every dollar assessed;
3. Everything possible is done to reduce costs and improve efficiency;
4. Each expenditure generates benefits which exceed costs; and
5. All this is certified by an independent board that has access to all the relevant data.

This bill strikes a positive note by linking financing with output, and gives both system providers and system users a stake in improving productivity.

As the funding dilemma is worked out, it is important that air carriers not be asked to bear costs caused by other system users. In one way or another, each category of user should bear the costs of its system use. However, we see nothing wrong with allocating to the public, by way of the general fund, whatever portion of system costs cannot realistically be borne directly by the users. Hence, should Congress decide that the public interest dictates against imposing general aviation costs directly on its users, we would have no objection to having Congress contributing, from the general fund, whatever amount is required to pay general aviation's share of the system's costs.

In addition to addressing the financing dilemma, your bill mandates major changes to the procurement, personnel and regulatory problems now faced by the FAA. We support these reforms, which we think are essential if the ATC's shortcomings are to be overcome.

True reform requires an integrated set of changes that will make the FAA's ATC activities more responsive to market forces and give both users

and providers a stake in achieving improved efficiency and higher levels of safety.

Your bill leaves many of the details of the proposed reforms to be worked out during implementation. Although we have some anxiety about this, we cannot think of any better way to move forward. The details of a reformed system -- and the financial mechanisms to support it -- should be designed in consultation with all the interested parties, and the effort should be guided by people expert in accounting, management, and ATC procedures.

We hope the final legislation will include provisions requiring that implementation be entrusted to the best qualified, most objective people available and provide, as well, for full consultation with system users.

Mr. Chairman, this bill sets us on a course to fix the problems that have bedeviled the FAA's efforts to optimize the performance of our country's ATC system. We congratulate you and your colleagues on S. 1239; you have drafted an excellent bill. My colleagues and I pledge our full support as you and your staff move towards passage and implementation.

Senator MCCAIN. Mr. Franke, welcome.

**STATEMENT OF WILLIAM A. FRANKE, CHAIRMAN AND CHIEF
EXECUTIVE OFFICER, AMERICA WEST AIRLINES, INC.**

Mr. FRANKE. Thank you very much, Mr. Chairman.

Good morning, Senator.

I am pleased to be here today, and thanks for the opportunity to express the views of a smaller national carrier.

America West is one of the smaller of the major airlines in the United States and our success over the last several years has been dependent almost entirely on our ability, through improved efficiencies, to maintain a low cost base which, in turn, permits us to charge lower fares.

America West is a long-time proponent of efficiency and productivity and we applaud the Subcommittee for its efforts to bring FAA into that same era.

I would like to acknowledge that this is a major undertaking with major consequences for the industry. We appreciate the leadership that has been introduced by the Subcommittee in this regard. We recognize that you are struggling with significant budgetary issues as a part of this process.

Real progress would flow from the proposed legislation in terms of personnel procurement and regulatory relief provisions provided for in the legislation and we endorse the approach that has been taken by the Subcommittee in this regard.

We would ask that the Subcommittee recognize, however, certain concerns we have about certain of the bill's provisions, as have been suggested. We want to see appropriate checks and balances in the process: Not an FAA that oversees itself, but one where there is appropriate oversight, and industry input into the process.

Second, a word about funding. We need to carefully construct FAA's financing requirements. A zero-sum budgeting process would be one we would recommend.

We don't have great confidence in the Administration's ability, by guess or estimate, to determine for itself what its funding requirements might be, and we would urge that an independent oversight be established in this regard.

Once the agreed-upon expenditure levels are agreed upon—and only then—we would then like to have further discussion about how the additional revenues might be raised.

If needed, for example, we would hope the following principles would be adhered to: No. 1, that all users of the national aviation system would pay their fair share.

Commercial aviation is already paying about 111 percent of its fully allocated costs, and as to the other users, we endorse the concept of fair play.

If and only if there is an additional need for funding by commercial aviation, we support the current funding system which, as you know, is based on the 10 percent ticket excise tax. Any attempt to change this basis for funding will result in an unintended alteration of the competitive balance between the carriers. We would urge that the Subcommittee consider funding alternatives not based on any other source than the excise tax.

We would also ask that you take a look at the FAA inspection programs, as proposed, which seem to be based on user fees. This is, in effect, like letting the fox into the hen house as it creates a regulatory process where the users would be the funders. This invites abuse.

Finally, we would suggest that any revenue produced in the future be isolated from the current budget process. The bill, of course, takes that step.

In closing, I would like to say that America West fully supports the efforts by the Subcommittee and we feel strongly that the Nation needs an improvement in the administration of its national aviation system.

What we are doing today is suggesting that there is some fine tuning available to the proposed legislation which would make it, in our opinion, what is needed in terms of the management of FAA's future performance.

Thank you, Mr. Chairman.

Senator MCCAIN. Thank you very much, Mr. Franke.

[The prepared statement of Mr. Franke follows:]

PREPARED STATEMENT OF WILLIAM A. FRANKE

On behalf of America West Airlines, Inc. (America West) I want to thank the Aviation Subcommittee for giving me this opportunity to present our views on the subject of reforming the Federal Aviation Administration, both structurally and in the way it is funded. I would also like to thank the Chairman of the Subcommittee, and the Ranking Members of the full committee as well as the subcommittee for their effort and commitment in addressing this issue. It is one of crucial importance to our nation's air transportation system, and to those commercial airline companies who's existence depends on that system.

I would like to begin by putting my remarks in context. America West Airlines was an air carrier born of the promise of deregulation. In 1983, and the years that followed, the only limitation on our advancement was imagination. From a company that began service with three 737s and four southwestern U.S. markets, by 1991 we had 121 aircraft, from 747s to Dash-8 turboprops, and our markets not only spanned the continental U.S., but we also spanned the Pacific. However, as the Chairman knows all too well, the airline then hit extremely rough air.

Many reasons have been given for that result and I do not wish to rekindle the debate. Suffice it to say, the predecessor company attempted to make our resources fit our needs, not the needs fit the resources. Stated another way, we made financial commitments without a clear understanding of how they would be paid. You, Mr. Chairman, and the former Chair of this Subcommittee, are very much aware of the pain felt by so many as the people of America West pulled the company out of its steep dive. Simply stated, this was done by controlling our needs and matching them to our resources.

I recognize that the crux of the debate surrounding S. 1239, the "Air Traffic Management System Performance Improvement Act of 1995" is finances. Most of my remarks will be focused on that part of the legislation. However, I do want to emphasize that several other areas of S. 1239 are very important. I encourage the Committee to embrace FAA Reform, not solely on a budget basis, but on the criteria of improved efficiencies, cost reductions, and fairness in regards to the user financing system.

The personnel and procurement reforms suggested by the measure before us would be great improvements to the existing system. Their accomplishment should not be minimized. The fact that these changes have not been done to date, despite all the criticism of the existing system, suggests to me they would be a worthy achievement in and of themselves.

In addition, the regulatory reform component of this measure would also be of immense help to the commercial airline industry. The Chair and Ranking Member are aware of the past and continuing efforts the industry has been making to reduce costs. Many of these efforts have had a direct impact on jobs, either at our companies or at those of our suppliers. This effort to hold down costs will be with us for years to come as we face competition not only from other members of our industry,

but from industries like telecommunications whose developments directly impact the demand for our product. Going forward, we would hope the regulators would be our partners, not our adversaries as it sometimes seems.

Regarding the funding section of S. 1239, I will first make some general remarks and then make a few comments on the actual language of the legislation. Mr. Chairman, America West recognizes the difficulties faced by you and your colleagues in balancing the federal budget. You are attempting to make the budget's needs fit its resources. We commend your effort and we support it one hundred percent. A truly balanced federal budget will be a boon for business, for investment, for jobs, indeed for the entire nation. We recognize that a crucial part of this effort is to wring out subsidies. A true test of the worth of a service is whether the receiving party is willing to pay for that service. If they are not, then you must question the value of the service.

It is my view that the commercial airline industry, through the ticket and cargo waybill tax, pays in excess of 100% of its fully allocated costs when it comes to the FAA and the services they provide to us. Your legislation recognizes that about 15% of airway system costs are attributable to public use aircraft. I also understand the FAA ascribes nearly 20% of its costs to general aviation. Those two areas combined equal 35% of the FAA's budget.

FAA studies and Congressional Budget Office Analysis also document that the commercial airline industry already pays more than the fully allocated costs of its share of services provided by the national aviation system.

America West is willing to pay the cost of the services it receives. We do not expect to be subsidized by anyone. At the same time, Mr. Chairman, we do not believe it fair to expect us to subsidize others. If that is not possible, then to the extent they exist, they should be borne by the public at large. There is simply no justification for imposing the cost of a subsidy on a particular industry that does not benefit from that subsidy.

When I look at the FAA's stated funding needs, Mr. Chairman, I am reminded of an old saying, "There's no education in the second kick of a mule." The industry has been made many promises over the years in exchange for our concurrence in an excise tax, and then increases in the rate of that tax. We need to have those promises kept.

I am also skeptical of the projected budget requirements. The lack of funding is not the problem at FAA. We need better, more product management and skilled use of available technology. Before accepting the FAA's, or any other group's statement of need, I believe it is vital for the need to be verified by an independent, outside group. It is also vital that such an analysis include a matching of needs to revenues. In this way, everyone concerned, including the commercial airline industry, can get a handle on what is needed, for what reason, at what cost. If reform doesn't produce the efficiencies expected, then maybe it should be reconsidered.

Let me now turn my attention to the specifics of the legislation before us. We support the concept of a Management Advisory Council (MAC). It makes a great deal of sense for an Agency that is so inextricably linked to an industry to have a formal process by which they receive the views of that industry. We believe the MAC would be strengthened by ensuring all segments of the commercial airline industry be represented. Specifically, the legislation should provide that no more than two members come from airlines above a certain size, and that carriers the size of America West be represented.

America West is concerned that the fees proposed in Section 303 could result in an unhealthy disruption in the good working relationships we have with our FAA inspectors. We do not want to create a situation where the radar cops are funding the police department. We support covering our costs in this area, however, this section should be amended so as to remove any incentive to regulate for profits sake.

Section 304 contains a ten percent cap on ATC cost increases. Notwithstanding my earlier comments, the failure of this to be linked to Section 303 fees is alarming. This could result in a cost increase greatly in excess of ten percent. This oversight should be remedied.

Further regarding Section 304, we believe care must be taken to ensure that the fees developed under this section take account of the competitive environment in the airline industry. The passenger airline industry has developed around the current cost-sharing formula. Any attempts to change that formula risk competitive disruptions. The cause of reform is better served by emphasizing the benefits to all from an improved system rather than attempting to shift existing costs inside a class of users. Making such a change to the legislation should be a top priority.

America West would also like to commend the authors of S. 1239 for embracing a position we consider crucial to the reform effort. That being revenues collected from the airline industry, indeed from the entire aviation system, for the express

purpose of operating, maintaining, and modernizing the nation's air transportation infrastructure be isolated from the federal budget process to the extent necessary to ensure their proper and timely expenditure.

America West Airlines believes S. 1239 is a positive, constructive legislative starting point in the effort to bring about comprehensive reform of the FAA and the nation's aviation infrastructure. If the concerns I have expressed today can be addressed, I believe the bill will serve the industry and the public well. We want to work with the subcommittee to bring about changes in the measure that reflect our comments and then work to achieve passage of this legislation.

Thank you again for this opportunity, Mr. Chairman, and I would be pleased to answer any questions members of the Subcommittee might have.

Senator McCAIN. Mr. Kelleher.

STATEMENT OF HERBERT D. KELLEHER, CHAIRMAN OF THE BOARD AND PRESIDENT, SOUTHWEST AIRLINES COMPANY

Mr. KELLEHER. Mr. Chairman, Senator Hollings, Senator Ford, Senator Pressler, I have many wise and very profound thoughts in my briefcase.

But since I cannot open my briefcase this morning and obtain access to them, you will have to hear my superficial thoughts about the bill.

I am fortunate in that I am in the position to support Mr. Franke's written testimony and his oral remarks and to adopt them in total as my own remarks.

Beyond that, I would like to say that I have labored in the vineyards of FAA reform, as all of you know, for at least a decade in several different capacities, including the Partnership for Improved Air Travel and the National Airline Commission.

During that period, I worked very closely in conjunction with the Federal Aviation Administration. The focus of those efforts was not on producing new revenue streams for the FAA, and the focus of those efforts was not on producing more money for the FAA from whatever revenue stream.

The focus, with respect to financial reform, was on enabling the FAA to become more efficient so that it could deliver the productivity results of which Bob Crandall spoke at a lesser cost to the users.

The introduction of a potential increase in the amount of money that the FAA would receive came as somewhat of a surprise to me about a month ago. I have not really had an opportunity to examine the FAA's figures to determine whether its more than \$2 billion a year estimated shortfall is correct or not over the next five, six or 7 years.

If that is the case, I would like to add just this thought—that all of the carriers have been up here on the Hill, with the assistance of many members of the Senate and the House, opposing the imposition of the jet fuel tax.

That would have amounted to about \$520 million or \$530 million a year for the industry. Compared to what the FAA says is its shortfall in funds, the jet fuel tax is a mere bagatelle, amounting to one-half to one-fourth of what the increased costs would be to the users of the system if the FAA does indeed have a shortfall as large as it alleges.

Second, I think that the bill accomplishes many very significant and very helpful things to the industry. I don't think there is any

dispute about that whatsoever. I think that the proposals it makes for personnel reform are excellent.

I think the proposals that it makes for procurement reform are excellent. There is really no dispute with respect to those things, and any comments that I might have in that regard would be sort of peripheral.

But the thing that I focus on is this performance based fee system, for one thing. And, second, the residual FAA and how it finances itself—the part other than the air traffic control system.

Now, you may think that the remarks that I am about to make are perhaps evidence of paranoia on my part. But, on the other hand, I do hear the little patter of footsteps behind me with respect to these issues.

And it may be that no harm will come to pass, but it is sort of the situation where you say to a client—the client says to you, “Hey, Herb, what do you think my chances of being held liable are?”

And I tell him 10 percent.

And he says, “Boy, that is a relief.”

And then he says, “But if I am held liable, how much is it going to cost me?”

And you say, “Well, \$100 million a year for the rest of your life,” at which point he thinks that is a very important case and a very important risk that he is facing.

And that is why I address these two particular issues.

First of all, with respect to the residual FAA, as I read the bill, the bill would enable the FAA to decide what is in the interest of safety and what is in the interest of security, and then to proceed on that basis to effect whatever it determined was in the interest of safety and security, the two broadest rubrics that you can possibly have, and to charge the users of the air traffic control system for what it had self-determined was necessary in the interest of safety and security.

This is not, by the way, in any way, shape or form, a personalized thing with me. I think that the present administrator of the FAA has done a superb job. I would be delighted to have him stay on for the next 20 years if he would.

But it is a question of what we might or might not be institutionalizing with respect to the FAA. This may sound a little facetious, and perhaps I mean it a little facetiously, but under that rubric of safety and security, we can decide what we want to do and then charge you for what we have determined is in the interest of safety and security without any controls. You might—

Senator MCCAIN. Let me interrupt. How does that differ from the situation today?

Mr. KELLEHER. Well, today there is some control, at least through the Appropriations Committee, over the amount of money that the FAA gets. Under the fee-based system, it is my understanding that there would be no limitations or controls.

For instance, as—you know, suppose the FAA decided that, in the interest of safety and security, everybody that worked there should have a bulletproof Lincoln Town Car. You can bring a lot of things under that rubric, as you well know, because you have heard this for many more years than I have.

So the residual FAA and the amplitude afforded to it is of concern.

Senator MCCAIN. Well, I don't want to interrupt, and I apologize for it. You will have to show me a time when Congress has told FAA they cannot enact a rule or regulation and enforce it if it has to do with aviation safety. That is a very brave Congress.

Mr. KELLEHER. I think the Congress might rethink the airport security issue, for instance, if it came before it again. Because it is about a \$750 million expenditure—

Senator MCCAIN. But we have not to-date.

Mr. KELLEHER [continuing]. With very little benefits.

The next thing is the dynamics of the fee-based system.

Mr. Franke explained that very well. A fee-based system has awesome potential consequences for the competitive dynamics of the American airline business.

Carriers that charge lower fares and have more operations are going to bear a much greater burden of the total cost of the system. At least that is a potentiality under that approach.

And my response to that, Mr. Chairman, is why do we not allow the FAA to come up with its proposal for a fee-based system in advance of giving sort of a blanket approval to that approach? Yesterday, before the House Aviation Subcommittee, I think I heard Administrator Hinson say that the FAA, with respect to its budget, was all right with respect to the 1966 fiscal year.

I believe that is what I heard. So it indicates that there is not any emergency today to do something on that score. I would kind of like to see what the FAA might come up with with respect to the fee-based system before sort of acquiescing to an indefinite future in that respect.

And I thank you for the opportunity to testify. I thank you for the superb work that you have done. But Bill Franke and I, and carriers like us, feel that to a certain extent the very future of our airlines is at stake in some of these decisions.

Senator MCCAIN. Thank you very much, Mr. Kelleher.

Senator MCCAIN. I note three of our members have come since the beginning. I wonder if they have any opening comments.

Chairman Pressler?

STATEMENT OF SENATOR PRESSLER

The CHAIRMAN. Thank you very much. I thank you for holding this hearing, and I thank our fine witnesses.

For the traveling public, ATC system inefficiencies are measured in terms of time and inconvenience. The airline industry, however, measures the adverse impact of these same inefficiencies in terms of billions of dollars of lost revenue and increased operating costs. These costs are compounded by inefficiencies at the FAA which also negatively impact air carriers' bottom lines.

Clearly, meaningful and effective ATC system reform is one of the most important missions Congress could accomplish to ensure our airline industry stays on the road to financial recovery. S. 1239 has played an important role in helping to focus debate on this critical issue.

I am particularly pleased and encouraged our air carriers are trying to work together as an industry to help bring about mean-

ingful FAA/ATC system reform. Understandably, there are differences of opinion among the carriers based on the type of services each provides. For instance, I look forward to hearing more about the different views of long-haul and short-haul passenger carriers regarding S. 1239. Moreover, I am interested in hearing whether cargo carriers have unique views relative to passenger carriers.

Putting aside these differences for a moment, I believe the airline industry and the Congress share the same goal. That goal is to ensure our ATC system is the most efficient in the world, our skies are the safest in the world, and our ATC system has the elasticity to grow as air service demand expands.

As a Senator from a small state, I hope our witnesses who represent passenger carriers will take a minute to discuss the impact they perceive S. 1239 would have on their regional carrier affiliates. Regional carriers are the backbone of air service to small communities.

As one who tries to specialize in some of the air service problems of smaller cities and some of the feeder airports, I think that issue is very important. I believe nearly forty percent of enplanements originate in non-hub airports in the United States today.

Finally, I would like to welcome the Association of Flight Attendants. I have long regarded well-trained flight attendants as one of the most critical safety features on our airlines. Mr. Chairman, thank you very much for your leadership on this issue.

[Prepared statement of Senator Pressler follows:]

PREPARED STATEMENT OF SENATOR PRESSLER

Thank you Mr. Chairman. I am pleased to participate in this, the second hearing regarding S. 1239. Reform of the Federal Aviation Administration (FAA) and our Air Traffic Control (ATC) system is a pressing issue of vital importance to the travelling public. As evidenced by our distinguished witnesses, this issue also is of critical importance to our passenger and cargo carriers.

For the travelling public ATC system inefficiencies are measured in terms of time and inconvenience. The airline industry, however, measures the adverse impact of these same inefficiencies in terms of billions of dollars of lost revenue and increased operating costs. These costs are compounded by inefficiencies at the FAA which also negatively impact air carriers' bottomline.

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As a Senator from a small state, I hope our witnesses who represent passenger carriers will take a minute to discuss the impact they perceive S. 1239 would have on their regional carrier affiliates. Regional carriers are the backbone of air service to small communities.

Finally, I would like to welcome the Association of Flight Attendants (AFA). I have long regarded well-trained flight attendants as one of the most critical safety features on our airlines. I always welcome hearing AFA's thoughtful views on safety and other issues.

Mr. Chairman. I look forward to hearing from our witnesses and commend you for your leadership on this critical issue.

Senator MCCAIN. Thank you, Mr. Chairman.
Senator Burns?

STATEMENT OF SENATOR BURNS

Senator BURNS. I just thank you for holding these hearings.

I have a statement I will submit then, Mr. Chairman, for the record.

And I appreciate hearing from the witnesses. And welcome all, this morning.

Thank you.

[The prepared statement of Senator Burns follows:]

STATEMENT BY SENATOR CONRAD BURNS

Mr. Chairman, I appreciate your holding this hearing today on Senate Bill 1239. We've been looking hard at the Federal Aviation Administration, and I'm glad we are continuing to look for a solution.

There is a sense that there are some things in the FAA that cannot be fixed internally under the current structural conditions. The general consensus is that the FAA is in need of personnel, procurement and funding changes that will allow it to be more flexible in responding to the needs of the air transportation industry.

The FAA means different things to the wide array of users. General aviation, commercial, and military aircraft use the same air space, yet they have different needs. The FAA has done a good job of responding to the different needs, while keeping safety in the forefront.

Senate Bill 1239 is one of several FAA reform bills. In looking at the differences between this bill and others that have been introduced, I have concerns about several of the provisions contained in S. 1239.

I am concerned that making the FAA a "quasi-independent" agency within the Department of Transportation will not give it the independence and flexibility it needs. The FAA has already undergone 25 internal reorganizations without any measurable success. Now it is time for real change.

There are several bills in Congress that would establish an independent FAA. This would give the FAA the flexibility to work more like a business than a bureaucracy.

Mr. Chairman, while there is agreement over the structural problems at the FAA, there hasn't been unanimous agreement over the *depth* of the funding crisis. This bill includes a funding mechanism that would impose service charges and Air Traffic Control user fees. In the first phase general aviation users would bear the brunt of the service "fees" and "charges. This amounts to nothing less than a tax.

There are other ways to fund the FAA and these avenues will be explored further.

I support efforts to help the FAA address their concerns. To that end I welcome this opportunity to look at various proposals dealing with the future of the FAA.

Senator MCCAIN. Thank you.
Senator Hutchison?

STATEMENT OF SENATOR KAY BAILEY HUTCHISON

Senator HUTCHISON. Mr. Chairman, thank you.

I do want to welcome two of my constituents to this hearing and say that both of them run very good airlines. I am an avid customer of both of those airlines—

Senator MCCAIN. Actually, all three do.

Senator HUTCHISON. Well, I am not familiar with the third. But I knew that the Chairman would be familiar with that one.

Senator BURNS. I have never seen any of the three of them in Montana. [Laughter.]

Mr. CRANDALL. We have that under study, Senator. [Laughter.]

Senator HUTCHISON. But I will just say that I am very pleased that we are looking at this issue. None of my constituents have said they like the idea of privatizing the FAA.

But I certainly have also heard from a number of my constituents that we really need to do something about the delays and the ability of the FAA to purchase equipment. We need to address the ability of the FAA to do its job in safety.

And so I think that a newly reorganized FAA is certainly something at which we should be looking at. I appreciate the Chairman's leadership in proposing this so that we can work through it and get the very best balance.

I do have some questions, but I will hold those until my turn.

Senator MCCAIN. Thank you. It has been suggested to me by all of the members of the committee that we have a hearing on airline food. So we will do that. [Laughter.]

Senator HUTCHISON. And I would like for my constituents to come back for that one as well.

Mr. KELLEHER. We are willing, Mr. Chairman. [Laughter.]

Senator MCCAIN. The—Mr. Kelleher—

Senator HUTCHISON. I might say that the man who only serves peanuts would be very pleased to talk about airline food, I am sure.

Senator FORD. What do you mean, the only one?

Mr. KELLEHER. I think it should be used to punish small, unruly children, myself—airline food. [Laughter.]

Senator MCCAIN. Let me again restate the problem, if I could very briefly. A balanced budget by the year 2002, come up with—the Appropriations Committee says come up with the money, and it is not going to be out of general revenues. That is the parameters under which we are discussing this issues and the genesis for this legislation.

By the way, I regret a little bit that we are focusing so much on the funding aspect of it, because I think that the details of the procurement and regulatory—personnel reform are not necessarily perfect.

And I am sorry that we are diverted somewhat by this whole funding issue, because the personnel reform and procurement reform aspect of the bill clearly need fine tuning as well.

But since that seems to be the focus—and understandably since, in the view of some, including you, Mr. Kelleher, that the very future of your airline is at stake—then obviously a lot of this hearing is going to be consumed by that aspect of the legislation.

Let me just add again, it is interesting to me that we had—the airline industry, all of the users—the Congress had planned on having and needing \$2 billion additional out of general revenues for now and forever.

Now, I hear both you and Mr. Franke say, "Well, maybe we do not need \$2 billion extra."

Where was your concern when it was coming out of general revenues? Now, Mr. Franke says I am skeptical of the projected budget requirements and the lack of funding is not the problem at FAA. Everybody I know says that is the problem.

Now, admittedly, with FAA reform we can save an enormous amount of money. No one knows better than you the cost of delays

on runways and in the air because of the inefficiencies of the system.

But if you can find me a study—or we would be glad to initiate one—that would indicate that there is not a lack of funding, GAO, CBO, every objective organization that I know of says that there is going to be a lack of funding.

And, I might say that we were basically going on that premise as long as an additional \$2 billion was coming in out of general revenues. So I wish you had expressed your skepticism before it was coming out of your hide instead of out of the hide of the average taxpayer.

I think it is also important to point out here that in a way some of us—and maybe you have dodged a bullet. Senator Hatfield had in the appropriations bill an automatic increase in PFCs.

And we were able to prevail upon him to remove that in order for us to try to work through this issue. I am not sure you were interested in a dramatic increase in PFCs without any hearings or any discussion or debate.

So, again, I am not trying to be repetitive here, although I am being repetitive. If you can find a way out of this box for us, then we would be glad to—maybe you can prevail on the budget committee to go back and say you can continue to take \$2 billion out of general revenues forever. I do not think so.

But if we can, then I would be more than happy—and then I think we could pass this legislation in the aspects of it in just procurement and personnel reform in a New York minute. Because I think everybody is basically in agreement on that aspect of it.

So I guess my first question, Mr. Kelleher, is that you are obviously not satisfied that the oversight group and other safeguards that have been included in the bill are sufficient to keep the FAA—you and Mr. Franke both—to keep the FAA from just inventing new rules which would require additional revenues.

Do you have a suggestion as to how to make sure that the—Mr. Franke, I believe your words were “the radar cops are funding the police department.”

Have you got a different proposal? I guess starting with you, Mr. Franke.

Mr. FRANKE. Well, first, Senator, in response to your general comment as to the \$2 billion deficit, I think that what we are saying is, we do not know what the deficit would actually be under your bill once we improve efficiency through better procurement and personnel practices.

And what we are suggesting is, until we know what that deficit is, it would be an idea in front of its time to begin trying to raise the funding needed.

Senator MCCAIN. Could I just quickly respond? Every hearing so far, I have had this chart that shows the 35 percent increase in enplanements, 18 percent increase in general aviation, and the 14 percent, I believe it is, decrease in funding. I just do not see how you make those numbers match.

Mr. KELLEHER. Well, they are based on FAA projections, Mr. Chairman, as to what the future activity is going to be.

And to tell you the truth, those projections, long-term, have not been very accurate.

Senator MCCAIN. Well, you know, it is not just the FAA's projections. It is that GAO agrees with those, CBO agrees with them.

Most observers to the industry at least indicate that there is going to be a significant shortfall. Now, whether that is \$2 billion or what—but I do not know of anyone who thinks that there is not going to be a shortfall.

Mr. FRANKE. And we do not—you know, and we do not know the answer to that question. We are not saying there will not be a shortfall. We are merely suggesting that we need to more carefully construct the alleged shortfall.

And we need to have better data than we have on the basis of what would the FAA look like, how would it perform once you legislation were in effect. We do not have that information at this point in time.

To your other point—which it is a governance issue, really. The bill now proposes that the members of the management advisory committee—which is an excellent idea—would be appointed by the director.

We would suggest that there is a better way to do that; that there ought to be others involved in the selection process that might have a more independent view. It would be much like Mr. Crandall appointing his own board of directors. There is a loss of independence in the oversight in that regard.

Senator MCCAIN. Mr. Kelleher?

Mr. KELLEHER. Yes?

Senator MCCAIN. Do you want to respond?

Mr. KELLEHER. I agree with Mr. Franke's views. Let me just throw out a figure by way of illustration, Mr. Chairman with respect to this fee-based system, the one that is of grave concern. Let me place kind of, you know, parameters around it.

If you take 1993 payments to the Federal Government by the airlines, and if you take 1993 departures, and you reallocate those payments based on departures rather than revenues, the effect is that the carriers such as America West and Southwest bear an additional \$600 million per year burden. And the longer haul carriers with less frequent operations, remove that \$600 million a year burden from them.

And I just want to make it clear that this is not an inconsequential, niggling, insignificant issue in its potential.

Senator MCCAIN. Mr. Crandall, do you agree with Mr. Kelleher's numbers?

Mr. CRANDALL. It all depends on what No. 1 uses for the top of the equation and what for the bottom, Senator. But I think what Mr. Kelleher is saying is that if you assume that all costs are drive by departures—and I think that he and I would agree that all costs are not driven by departures.

Mr. KELLEHER. Correct.

Mr. CRANDALL. But if you assume that all costs are driven by departures, what he is saying is that today's long-haul airline passenger is being compelled to subsidize today's short-haul airline passenger to the tune of \$600 million. If that is true, I think the subsidy is inappropriate.

But in my own view, we should take the—I do not see any reason, for example, to—for somebody flying between New York and

Los Angeles to pay for a portion of the journey of somebody who is flying from New York to Boston.

That is neither here nor there. Mr. Kelleher offered a wonder analogy sometime back when there was some consideration being given to the state of Texas contributing state funds to build a rapid train system in Texas.

And Herb made the observation that if the state would simply give him the money, he would provide the air transportation free of charge for the rest of the natural life of all Texans now living. So he is against subsidy, and so am I.

I think we ought to—I really believe that—I think there are a couple of things that are true. No. 1, that, in my judgment, if we can make the FAA more efficient, the total costs of air traffic control will go down.

The fact is, there are enormous costs beared in delays today. If we can get rid of the delay cost, we can afford to pay more for the system that will avoid those delays. On that point, I think all three of us would agree.

I think the whole airline industry would agree. So it is my view that, in effect, this is what this bill suggests.

Let us get on with fixing the personnel issues and the procurement issues. Then let us go out and hire the best consultants that are around and see what they think is the most efficient way by which to pay for the air traffic control system.

But, in the meantime, let us get on with the process of fixing the system so we can get rid of the delay costs.

Senator MCCAIN. Senator Hollings?

Senator Ford?

Senator FORD. Go ahead, Senator Hollings.

Senator HOLLINGS. Well, this is a fortuitous opportunity, because the Chairman and I have had, Mr. Franke, an on-going dichotomy relative to slots. Deregulation, Mr. CRANDALL.

Now, Mr. Franke, while we are both here, I happen to have done work for Eastern Airlines, Piedmont, Delta way back as a young lawyer.

And what you do and how these slots were obtained was that the communities taxed themselves, built the facilities, put out the airstrips and buildings and services and everything else, then went to an airline and said, "Look, can you bring service in here, let us say between Washington and my home town of Charleston."

Then they said, "Well, yes, if we could have so many flights and so many services."

And we would come up to the CAB, the Civil Aeronautics Board, we would have a hearing based on public convenience and necessity, not on fairness. There was not any fairness involved—just because you have got service, then every city in America should have service.

On the contrary, it was those who were willing to invest for that service and tax themselves for the service. And, incidentally, my service has gone materially down.

But that is why you find—and you have got a real champion looking for slots for you. But then you have got some real opposition in this particular Senator, because I have been losing all of these services.

Mr. Crandall, if you buy USAir, could you guarantee me the same service I had when I got here as a Senator? [Laughter.]

Senator HOLLINGS. I had three flights up and three flights down. I had National and—we had a wonderful time. Then it went to Pan Am, then it went to Air Florida, then it went to Piedmont, and now it is to USAir.

And I remember when I got here it was \$68 round-trip coach. Now my wife has to pay about \$687 coach.

If you call up—call tomorrow and ask to fly—and there is only one flight. There are not three flights. But I am not talking about the cost right now.

I am just talking about the service. If you buy USAir, can you promise me you will give us back our services?

My chairman tells me your service has improved. I am trying to get it back. Not improved, just the way it was.

Mr. CRANDALL. I promise not to ask for your support for the purchase of USAir unless we are prepared to make appropriate guarantees along those lines. [Laughter.]

Senator HOLLINGS. Mr. Kelleher, you are a good low cost operator. How about you buying USAir? [Laughter.]

Mr. KELLEHER. Well, let us just say, leave us as a good operator, without the low cost part.

Senator HOLLINGS. Well, I think you are dead right, Mr. Crandall. You say the moneys that we get from the other lines should be allocated to them. That has been the big problem. And, otherwise, we ought to look at general revenues.

I mean, this basic logic does not apply to public convenience and necessity. It is like going to the FBI and saying, now, for all of the criminals you catch you have to charge enough fines to pay for your operation.

The many of Americans have never flown on an airplane. So if we are going to get to the basic logic, we have got to cut out air service, period. Because they have not ever flown or wanted to fly or whatever. They have never gotten on a plane.

So we have got to look at it both objectively and look at it from the standpoint of public convenience and necessity and fly before buy. I want to look at those fees too before they all of a sudden become effective.

I think that is our duty here. I know the Chairman feels that at least they ought to come back to us for approval of whatever it is. So we will be working with you.

And let me again commend the Chairman on his leadership.

Senator MCCAIN. Thank you, Senator Hollings.

And I know that our three witnesses would look forward to our hearing on airline deregulation and its effects. We have got to do that sometime. [Laughter.]

Senator MCCAIN. Chairman Pressler?

The CHAIRMAN. I just have one or two quick questions. Mr. Crandall, what do you anticipate the impact would be on your foreign operation if countries abroad which presently do not levy overflight and ATC system user fees on your foreign flights decided to do so based on the precedent S. 1239 would establish?

Mr. CRANDALL. Senator, around the world, almost without exception, we pay very heavy overflight fees to other countries. For the

most part, the airlines of those countries do not pay corresponding fees in the United States.

If and—at this stage of the game, there is not anything. The system—ATC financing abroad disadvantages U.S. carriers. It is done very deliberately in a whole variety of ways.

The CHAIRMAN. Now, how would this proposed legislation affect regional carriers in your judgment? Would that be any different from the way it would affect the major carriers? Are there any assurances for the smaller states with respect to air service under the new funding structure?

Mr. KELLEHER. Senator, I am not sure what you mean by regional air carriers. The regional commuters? Is that—

The CHAIRMAN. Yes, I am referring to regional commuter passenger service.

Mr. KELLEHER. Well, those—it all depends on the formula that you use, as we all understand, to come up with this fee-based system.

But, for instance—and as Bob said, assuming, just assuming that it is based solely on departures, the regional commuters would be badly injured by the imposition of a tremendous amount of additional expense on that, if it were based solely on departures.

Because they have small airplanes, they operate frequently, and they generate smaller revenues. So if you went to a departure system and allocated the costs, they would bear a much greater proportion of that total cost, I think, almost by definition.

The CHAIRMAN. I have one final questions. I am going back and forth from this hearing to the Finance Committee where we are starting a tax package.

I know it is anticipated that, as a percentage of revenue, the jet fuel tax would have a greater impact on smaller carriers than maybe on our largest major carriers.

Is this true with respect to user fees? And what other unique impacts might the user fees have on your airline?

Mr. KELLEHER. Well, if you again proceed from the thesis that you use departures, which was my assumption, Mr. Chairman—I am not saying that it would come out exactly that way.

But this does have the potential of shifting huge amounts of cost from one segment of carrier to another. If you use those, the impact will be prodigious upon the lower cost smaller carriers that operate smaller airplanes.

Mr. CRANDALL. If I could insert something, Senator: We are really not talking about shifting costs among carriers. We are talking about which passengers pay for the air traffic control system.

Airlines do not pay for the air traffic control system. Passengers do. So today, rightly or wrongly, and I would not want to argue that at this point, the long-haul passengers pay some of the air traffic control costs for short-haul passengers.

We are going to—one of the things that we will have to decide, or you collectively will have to decide, is how you want to do that in the future.

Mr. FRANKE. Mr. Chairman, could I add a comment. I think that the discussion that is going on here between Mr. Kelleher, Mr. Crandall and Senator Pressler, identifies the problem, which is as we sit here and try to deal with this issue, what we are doing is

essentially trying to reconfigure the playing field for the competitive carriers. I do not see the basis for doing that. The airline industry is a very competitive one. We all compete and sometimes desperately with one another. I do not see the need for this bill to change the nature of that competitive environment.

Senator MCCAIN. Mr. Franke, in a perfect world, that would be absolutely correct. If we did not have to come up with \$2 billion additional or something less than that. We have to come up with these revenues.

I do not think hardly anybody on this panel supports increases in taxes, but it is not a matter of reconfiguring the playing field. It is a matter of coming up with a \$2 billion shortfall—

Mr. FRANKE. Well—

Senator MCCAIN [continuing]. Or something. And, by the way, maybe I was a little gentle. I know of no one who believes that you can make up a \$2 billion shortfall, no one, no living American that is objective on this situation, without coming up with additional fees.

So we—and where were your complaints when the \$2 billion was coming out of the average taxpayer, as Senator Hollings said, who probably has never been on an airline?

Now, you are questioning the need for it when you were perfectly happy when there was an additional \$2 billion coming out of general revenues. I understand that, because it was not coming out of your hide.

Go ahead.

Mr. KELLEHER. Mr. Chairman, the reason why we did not complain about that is very simple: Because according to the DOT and the Federal Aviation Administration, as well as the Congressional Budget Office, under that system the commercial carriers which we represent were paying 111.2 percent of the fully allocated costs of the operation, their operations within the air traffic control system. That meant that some other segment of aviation was not paying the allocated costs of its operations within the system.

That is something that the government is entitled to decide as a matter of policy.

But if, as a matter of policy, it decides that those other segments of aviation are not going to pay their share, then it seems to me by implication, it has decided that there is a valuable national purpose in them not paying their share and, therefore, it should come from the general fund.

Senator MCCAIN. Well, again, I do not—in revisiting the issue as to whether it should come back to—come from the general fund or not is or would be a very interesting argument, discussion, and I would side with you.

But that is not the hand that we are dealt.

Mr. KELLEHER. Well, Mr. Chairman, let me say this if I might. You have properly, as I say, challenged us to come up, you know, with some alternatives with respect to this shortfall.

And I am willing to say on behalf of Southwest Airlines, not speaking for anyone else, that if indeed there is a shortfall—and, in a sense, I think the shortfall forecasts that the FAA will not be successful in achieving productivity improvements.

But if there is a shortfall, we would prefer to see an increase in the ticket tax and the waybill tax than to go to a different system of allocating the costs.

And what we have now, I think, might be referred to as a flat tax.

Senator MCCAIN. Thank you.

Senator FORD. We have come from the ridiculous to the sublime, a flat tax—[Laughter.]

Senator FORD [continuing]. Or vice versa.

Let me try, Mr. Chairman, if I can with these leaders of the industry, see if I can wade through this minefield a little bit and find out what we agree on and maybe set that aside and maybe refine that in our discussion and debate here in the committee before it hits the Senate floor.

I have a couple, maybe three, questions for all of you gentlemen.

Many of you have indicated that you do not want to pay more for the FAA than you are paying today. Do you gentlemen agree that we must first look at what precisely the FAA needs before we ask for new money?

I think that can be a yes or no.

Mr. CRANDALL. Yes.

Mr. KELLEHER. Yes.

Mr. FRANKE. Yes.

Senator FORD. Under this bill, no ATC fee system would go into place, would go into place now, unless and until the current ticket tax or cargo waybill tax was reduced.

Eventually, the trust fund would be completely replaced by the new system. What we get, we get to spend in the income and outgoing.

Under these circumstances, would you support a user fee system that provides the money directly to the agency?

Mr. KELLEHER. I would support a user fee system that provided the money directly to the agency provided, Senator Ford, that the funds flowing to the agency were raised from exactly the same formula that is now used with respect to the ticket tax and waybill tax and which has governed the airlines decisions and the investments that have been made for the last 25 years.

Senator FORD. When do you do—when do you bridge a decision where the last 25 years you have been doing it this way, but all of a sudden, you are going to have to—you are looking to the future, and nothing about you looks behind?

And so you are looking at the future. Are you just going to keep on doing—keep on keeping on, or are you going to try to change when new bumps hit in the road?

Mr. KELLEHER. Well, I think that's an excellent question, Senator. Certainly, we would have to change if new bumps hit us in the road, from the standpoint of Southwest Airlines.

Incidentally, let's assume that 5 years from now it was decided that a fee system was going into effect that charged you on the basis of departures alone. At that point, Southwest Airlines would have to face the future, would have to make a policy decision and would become much more of a long-haul carrier than a short-haul carrier so as to reduce its departure expenses in that respect.

Senator FORD. Mr. Franke?

Mr. FRANKE. I think that—I agree with Mr. Kelleher in large part. I would only add that if the fees were——

Senator FORD. Well, if you all agree, one of you could have stayed home. [Laughter.]

Mr. FRANKE. I would have volunteered. But I think I would add to that that it would be important if the fees are going directly to the FAA, that the governance process, the oversight of the FAA, be independent; at least have some element of independence to it.

Senator FORD. It seems like we are struggling. Now, I have been for and independent FAA 7 years, for the director and all of those good things, so we could kind of get it where they could operate like a basic business.

That proposal has been up against a brick wall now for some time. Now, we are at a point where we are not quite making it independent, but we are giving it some authority to make these shortcuts.

For procurement, when you get a contract, the loser challenges that. Then once that challenge is taken care of, and he still does not win, then they take the FAA to court. Then when you get through with the court case, your proposed state-of-the-art system is way behind times.

So we have to change this system. Right now, we have given to each Senate office the ability to go downtown and buy computer off the shelf. Hell, if we have to wait for the system to get the equipment through, we never would get it hooked up in 6 years, you know.

So what I am saying is there are some—we will make mistakes, sure; we are human. Everybody is going to have an opportunity to fuss about what we do. That is the idea of government.

It is really somebody you can fuss at, nobody to fuss back. So what I am trying to get here is: What can we agree on, and then refine our decision to the point that we are down to maybe a couple of volumes?

Mr. FRANKE. Well, Senator, I think that—to that point, that America West Airlines fully supports the concepts, the philosophies that are contained in this bill. We have told the Chairman that we want to work with the committee in that regard.

I think what we are talking about today are the finer points of the overall legislation. We are focusing, as Senator McCain said, perhaps unfortunately, on the funding part of that.

But the procurement benefits, the personnel practices that would produce additional efficiencies that flow from the propose legislation, are of enormous value to the industry. We fully support the efforts of the committee in that regard.

When I said independence in the oversight of the FAA, I was not suggesting an independent FAA. I endorse the idea of the committee of having a quasi-independent FAA. I am merely suggesting that the Management Advisory Committee which now has its members appointed by the director of the FAA, that that is susceptible to abuse.

Senator MCCAIN. I think that is a very legitimate comment on that issue. I think we ought to examine that part of it.

Senator FORD. Let me just—and I will not—I have a—we cannot simply convert the current taxes by renaming them. We have to be,

I think, be relatively careful. The bill puts the development of user fees on a fast track.

And the carriers must be a part of that process. You just have to be a part of that process. I would not be comfortable if you were not.

And so we have to worry about the parameters, including the bill. Putting aside the concept of any increase in fees, do you have any preference for the approach taken in the Senate bill as opposed to the version being considered in the House? Mr. Crandall?

Mr. CRANDALL. Well, you are probably a greater expert on that than I, Senator. My understanding of what is going on in the House is that we simply take the trust fund so-called "off budget," to which I gather—and I am not—I am also not an expert at Federal accounting.

I gather that the notion is simply taking things off budget introduces some accounting questions that are troublesome to a number of people in the Congress.

Let me answer your question in this way, if I can: I am not—I do not believe that it is essential that we change the basis on which we collect, on which we finance the system. The dialog that has been going on here between Herb and Bill Franke and myself really has to do with the fact that an excise tax approach does cause a subsidization of long-haul by short-haul.

But as Herb says, we have all—we have made those decisions. We have all acted on the basis of that system for many years. Maybe that is the best system to leave in place.

My own view is that there is an enormous amount of statistical data that we do not have. Bill Franke made the point earlier that we do not have long-haul data; we are not going to have it for a long time.

We do not know what all of the elements of cost are. We do not know what the best method of allocating those costs or cost users are. That is going to be partially an accounting question and partially a political question.

I would come back to this point: I think we ought to get on with the process of reforming the system because, I think, the savings inherent in greater efficiency in the ATC is so great that the net cost of the system is going to go down, however we pay those costs.

And then we ought—we ought to let accountants and statisticians gather together all of the information, and then have another series of hearings and arguments about whether we want to change the historic basis of how cost is allocated or not.

I do not—I do not feel terribly strongly that there has to be a change. But I do think we have a great opportunity to get on with the business of making the FAA more efficient.

I think we ought to do that without getting too bogged down into the questions of how we are going to finance it.

Senator FORD. Mr. Franke?

Mr. FRANKE. I endorse those comments. I would suggest that this is a unique opportunity in history for us to deal with this issue. We applaud the efforts by the subcommittee in that regard. We want it pushed forward.

However, we were asked to testify on our views of the bill. And to that end, we have tried to identify some areas of concern we see

within it. I agree with Mr. Crandall that we ought to go forward with the effort.

And I am pleased to hear him say that he is not necessarily for change in the method of raising the funds from his current one. And if that were the case, then I think the three of us would be sitting here unanimously in support of the process.

And to the extent that the political process is willing to deal with that in subsequent hearings, that is satisfactory to me. I mean, as long as we are all able to say our piece and focus on the issue of how this would be funded, that is adequate for me.

Senator FORD. Mr. Kelleher?

Mr. KELLEHER. Senator Ford, I would agree with those comments in their entirety.

Senator FORD. Well, before I turn this over, Mr. Chairman let me—I understand that in the present system, that we do not know how much we are going to save, and it is kind of hypothetical.

And I do not like the word “assume.” But it is out there. We do anticipate a shortfall. I am not sure we can wait every year for us to improve and lessen the shortfall. I think we have to have some funds, and if we have a surplus that we can either use it for the right thing, or we can return it or reduce costs. I think there are a lot of things we can do to make it work.

I am encouraged by what I see and what I hear and what I feel. There is some body language every once in a while that I—I am not sure I understand it all, but at my age any body language is good, you know. [Laughter.]

Senator FORD. But the—did I do all right?

Senator HOLLINGS. You did good. [Laughter.]

Senator FORD. Fritz understands it. [Laughter.]

Senator FORD. So let me turn it over here, and I think we will—I think we are moving in the right direction.

Senator MCCAIN. Thank you very much, Senator Ford.

Senator BURNS. I do not know whether I want to follow that or not. [Laughter.]

Senator BURNS. Non-verbal communications, I think that is what they call that.

And by the way, I heard a comment that Mr. Crandall made about he does not understand the government accounting systems. The government does not even understand them. I want to get that clear right now. [Laughter.]

Senator BURNS. We have a bill in right now that would tell all government agencies to use the same accounting systems. We have too many accounting systems in our own government. So we have a problem with that.

On Fritz's comment about three flights up and three flights down, I do not—I do not disagree with that, unless you have two up and three down. [Laughter.]

Senator FORD. In airline language, that is not too good. [Laughter.]

Senator FORD. I want to know, and I have this question: What formula or how do you compute the cost of delays right now? What do you—how do you give us some way, give us some way that we can start processing through our own minds of how big this prob-

lem of delays at O'Hare or at here in Washington, National or Los Angeles, or Frisco, or whatever.

How do we compute—how do—give us an idea of what you use—how do you come to the figure of what the real costs of the delays are?

Mr. CRANDALL. Senator, that is a question that I will take a shot at. I am sure I will leave some things out, and my colleagues will add it in.

In the first instance, measuring the cost of the—the real cost of delays is an exercise in modeling. It is in a sense a hypothetical number, because if we could count on having the air traffic control system operate as it does on a blue bird day when all of the weather is perfect and everything does work.

All of us would schedule our airlines and our airplanes more intensively than we do. So the schedule as we publish it already has in it a very substantial cost of anticipated delay, because all of us, for example, when we—when we schedule a flight, let us say, from New Yorks La Guardia to DFW, we take into account the historical amount of delay that we suffer on the runway at La Guardia, on the runway at DFW, and in the air.

So to some extent, the schedule as we publish it, it includes a very large amount of delay cost.

The actual cost of delay realized after we publish the schedule, that is the difference between the schedule and the actual, is computed by taking into account those costs that we have to pay in terms of fuel burnt which is unnecessary, in terms of engine running time which drives unnecessary maintenance, in terms of crew time where we pay in accordance with our contracts, our labor contracts and which provide that we must pay the crew members additional dollars under certain kinds of delay conditions.

It provides—it would include all of the costs of delivering baggage to customers when their baggage is—mishandling is caused by delays.

It includes all of the extra ground costs, the buying of hotel rooms, the buying of meals, the—

Mr. KELLEHER. Missed connections.

Mr. CRANDALL [continuing]. Customs. So the numbers are measured in many, many billions of dollars. But the fact is you—to sit down and truly understand the total cost of delay, you have to start with a series of assumptions about the base against which you want us to compare.

Senator BURNS. Well, I—

Mr. KELLEHER. Bob, there is also the cost to the passenger or to the consumer of those delays, which is very hard to top.

Senator BURNS. I think whenever we start talking about the actual operations—I think we have to look at it very hard from the way you operate, your costs, and not assume that we have the guy there 6 hours late and he has probably missed his appointment and all of this.

And you can only say, "Well sir."

I have to tell you a funny story, because most of you remember flying into OMKC. You have a river on both ends of that thing, but you also—the only way that you could get to the airport was on the Broadway Bridge, which cost a quarter.

People did not like to pay the quarter. So they would go on across the old AS&B Bridge and came back through North Kansas City.

And the railroads used to switch over there in North Kansas City. Well, there was a guy who came thumping in there 1 day. And, of course, the railroads were switching. He missed his airplane.

And at that time, Kansas City also had an evening paper. I really did not think much about it, because I was writing tickets for Krazo Airlines. That is Ozark spelled backwards. [Laughter.]

Senator BURNS. And I will never forget that guy grabbing his bags and leaving the terminal and leaving—I do not know where he went. But that guy, when I picked up the paper, when I got home, there he is out there with his car across the railroad track.

And he says the trains took their hour; he is going to take his. [Laughter.]

Senator BURNS. And he was—but I just want to know how you compute that. Then how do we make it a—because I am also on another bill that is being considered.

And that is the—in fact, that is the Lightfoot and the Inhofe bill, and this one. I want to get the best of both, if I possibly can.

So that—and that is the only question I had, Mr. Chairman And I appreciate your testimony, and I appreciate the challenges that you have. So thank you very much.

I think—I do not know whether the Senator from Texas wanted to question these folks or not.

Senator MCCAIN. If she comes back, we will call them back.

Senator BURNS. Stick around. [Laughter.]

Senator BURNS. To be continued. [Laughter.]

Senator MCCAIN. I would just say thank you for your testimony.

And I especially appreciate the comments of Senator Ford in that I think we can narrow these differences and move forward.

I would remind you again that in the appropriations bill, it dictated that certain things would happen. We got a delay of that until the first of April, included in the bill.

When I became the chairman of the subcommittee after working for many years with Senator Ford, as the ranking member, the first thing I did was call former Governor Baliles back, because I think that his commission and his work—which you were a member, Herb—was the best that I have seen as far as setting priorities, identifying issues affecting the aviation industry. We got some very important testimony from him.

He recently wrote a column called “Air Traffic Control, Slow Takeoff.”

And in it is, if I could quote to you, “The Senate bill goes further in taking on the important financial issues. The conventional wisdom seems to be that personnel and procurement changes will be made in this Congress, but the financial issues will be left there until later. Such a solution is no solution at all.

“Why is financial reform so important? Under current Federal budget policy, the funds available to the air traffic control system will decrease dramatically over the rest of the decade, while the system adds tens of millions of new passengers each year. The financial pressures will grow, as will the system’s problems.”

I think Governor Baliles states the case far more succinctly than I did. I would remind you that we—according—in the—according to this legislation—and it is all open to negotiation, as Senator Ford said.

We have one set of fees which go into effect in 6 months, which as you know are foreign overflight business jets, DOD, et cetera. Then later, there is another set of fees which, obviously, would be far more difficult decisions to be made.

And in our attempt to accommodate, you have to at the same time move forward. That is why we put in sort of a two-tiered aspect in the funding.

Senator HUTCHISON, did you want to—

Senator HUTCHISON. Yes, thank you, Mr. Chairman.

I was called out to speak to Trent Lott, and I told him we were having trouble funding the new FAA and I wondered if he would mind taking it from maritime subsidies.

Senator MCCAIN. I was going to say—

Senator HUTCHISON. He said he would be right over.

Senator MCCAIN. We could do the same thing as we do for the railroad and the maritime industry, and we would be fine. [Laughter.]

Senator HUTCHISON. Thank you, Mr. Chairman.

There were just a couple of other questions. I think most of the things that I was interested in have been talked about before.

But I wanted to come back to the basic issue of how the Chairman's bill creates the new FAA. It is not independent. It is not private. But it is sort of quasi-independent with enhanced autonomy within the Department of Transportation.

And I would just like your views, any of you who wish to give comments, on that basic structure. I mean, is it the best? And if not, what are your concerns about it?

Mr. FRANKE. Well, I think we have said that—I think you were out of the room—that, in effect, we absolutely do support the concept of a quasi-independent FAA. The issue is only in the fine-tuning of the governance process. We believe that there are improvements that could be made in that regard.

Otherwise, we think the benefits that would flow from the quasi-independent FAA are of great value, and are fully supportive of the effort.

Senator HUTCHISON. As you are going through, do you like the council concept with industry?

Mr. FRANKE. We like the council concept, but we would suggest that their might be an alternative to having the administrator appoint all members of the council.

Mr. CRANDALL. I think, Senator, the council idea which gives the systems users substantial voice in the governance of the system is a very good one.

As Bill Franke points out, simply having the administrator appoint without any constraint or oversight of the members may not be the best approach. There may be an approach where the authority to appoint the members gets shared between the administrator and others.

And we have some ideas that we are prepared to talk about. I gather that—I gather Mr. Franke does also. But the general idea, I think, is a sound one.

Mr. KELLEHER. Senator, we agree. Southwest agrees with that observation, that the administrator should not have the only discretion and opportunity to appoint 13 members of the council.

And I also raise a question. I am not certain about this. But I think the number 13 possibly might be a little unwieldy. That is a lot of people to comprise any kind of board.

But I support in general the comments that are made by Mr. CRANDALL AND MR. Franke.

When I was head of the Partnership for Improved Air Travel for two and a half years, basically, we said there are 100 roads to Rome, to accomplishing the personnel reform, the procurement reform.

And really which road you take is perhaps less important than getting to Rome.

Senator HUTCHISON. OK. Last question: This bill, of course, focuses on the need for ATC funding, which we all agree is crucial.

But there have been concerns expressed in today's FAA about the lack of capital funding and the lack of attention to capital funding. That could also be the case in this bill.

Do you have any comments on capital funding needs, and if we need to do anything that would separate a capital funding?

Mr. KELLEHER. Senator, I have some views on that, if it is appropriate. I think they are probably shared by Mr. Crandall and Mr. Franke.

And that is that in working on this issue over a good many years—and by that, I mean, all of us—it was always our contemplation that once you got a stream of revenue into the FAA from whatever source or however determined, leaving that debate behind for the moment, that the FAA would have the authority to leverage that stream of revenue as any private business would; so that if it had a 10-year, long-term project like the Advanced Automation System as an example, instead of being subject to the vagaries of the appropriations process each year and going up and down, the FAA could go out and sell bonds and get all of the money to do that long-term capital project immediately.

And I know from talking to the vendors to the FAA that one of the biggest problems they have from their own standpoint with respect to cost is that, you know, this year they are supposed to produce 100 of these computers, and the next year it is 2 computers, and the third year it is no computers, and the fourth year it is 400 computers.

Well, it is not exactly an assembly line, but by way of analogy, there are immense costs in pulling that down and then building it back up again, as opposed to allowing them to leverage the revenues that are coming in and to say, "We want 200 computers for you every year for the next 10 years, and you are guaranteed that you are going to get that money."

I think you could save an enormous amount through that type of saving, if they were allowed to leverage the funds that they have.

Senator HUTCHISON. Well, we have also had some problems with runways where there have been letters of intent, and money has been cut by Congress.

Mr. CRANDALL. Yes.

Senator HUTCHISON. And therefore, the FAA is clearly put in a position of having to set priorities. But an airport has already gone out and started a runway.

And I think those are very serious issues.

Mr. CRANDALL. Well, they are very serious issues, Senator. And as Herb Kelleher has pointed out, you do not even have to borrow the money if, as the bill contemplates, the FAA has direct and sole control over all of the taxes, taxes and fees that are levied on aviation.

Just the FAA—the FAA's ability to commit that stream of revenues out into the future even without borrowing it will resolve both questions of multi-year procurement and issues like runways, where the funds themselves can be arranged, or the work can be arranged or the contracts let by local communities, so long as they can count on the allocations that have been promised by the FAA.

And in terms of computers and those kinds of things, the manufacturers would be pleased to provide the financing, so long as they can count on the FAA being able to commit itself to a long-term program, of a multi-year procurement program.

Senator HUTCHISON. That might require a set aside of capital funding so that there would be a stream—if you are talking about bonding—

Senator McCAIN. Well, we have—

Senator HUTCHISON [continuing]. Infrastructure.

Senator McCAIN. We have a surplus now, as you know, that would be drawn down.

Mr. FRANKE. I think that if you are going to plan long-term, you need to be able to commit and fund long-term. I think the bill—there is enough flexibility, as the Senator points out, to permit that.

The vendor is going to be, or the—or the contractor is going to be interested in the ability of the FAA to commit and recognize that the commitment authority is there and there is a stream of revenue flowing to the FAA, that it is a safe investment on their part.

Senator FORD. May I interject here?

What happens to us is that—and what happens to you and we see it now, that when we get in the middle of a project, we decide that we want to use that to help offset the deficit, so then we do not spend it.

Senator HUTCHISON. Oh, I know.

Senator FORD. And they are paying the tax, and the tax goes into the fund, and the fund is not spent. The consumer and the airlines are not receiving the benefit intended.

So what we have here is the intent of the collection of funds should go in long-stream, whatever they want, gives the local an opportunity—we passed a little amendment not too long ago, recently, for Nashville, so that they could go ahead and build, and we would pay for the principal and not the interest when they came up on the pecking order.

And so you can do that now. So we sat down and tried to figure out a way that we could allow the local agency to spend the money and, at some point, we could help reimburse. That was long-term, with no interest involved.

And I think this is basically the same thing we are trying to do here. I hope it will work. I think it will eliminate the—you know, you get the earthwork done, and if you cannot pour your concrete on it, it is not worth a darn.

Senator MCCAIN. I want to thank the witnesses.

I would like to just make one additional comment. One thing I have learned around here is it is awful easy to introduce legislation.

On an issue of this magnitude, it has to be bipartisan.

And we have to have the agreement or acquiescence of most of the affected industry. This is the third hearing we have had.

We may have to have another hearing. I would not enjoy it particularly, but we may have to. [Laughter.]

Senator MCCAIN. We may have to have another hearing or so on this issue. But we want to work with you and all of the other affected parts of this very important industry. We recognize that it is—how important it is that we try to reach some agreement and maintain the bipartisan approach to this legislation.

Otherwise, we are going to be faced with a situation where a meat-ax approach is taken, rather than the kind of measured and, I hope, informed addressing of this very important issue.

And I thank you for being here today. Thank you.

Mr. CRANDALL. Thank you for the opportunity.

Mr. FRANKE. Thank you.

Mr. KELLEHER. Thank you.

Senator MCCAIN. Thank you.

Our next panel is Mr. Fred Smith who is the Chairman and CEO of Federal Express, Mr. Rex McClelland who is the Senior Vice President of Delta Air Lines, and Ms. Carol Hallett who is the President and CEO of the ATA, and Ms. Patricia Friend who is the President of the Association of Flight Attendants. [Pause.]

Senator MCCAIN. I would like to welcome the witnesses.

And I thank you for your patience this morning. This is obviously an issue of intense interest.

Mr. Smith, welcome.

Mr. SMITH. Do you want me to start—

Senator MCCAIN. Yes, sir.

Mr. SMITH.—Senator.

Senator MCCAIN. Yes.

STATEMENT OF FREDERICK W. SMITH, CHAIRMAN AND CEO, FEDERAL EXPRESS CORPORATION

Mr. SMITH. Well, thank you very much on behalf of the 113,000 Fed Ex employees that I represent. We are pleased to appear before you.

We have submitted a written statement for the record, and I will make my comments very brief and then be happy to answer questions after the other presentations.

In general, we at Federal Express support the Air Transport Association's position on the bill. We would like to commend you and

the committee for the outstanding leadership in bringing this legislation forward.

We have supported for many years—and I have been in those same vineyards with my friend Herb Kelleher over these past 15 years. We supported for many years the establishment of the FAA as a government-owned corporation managed by the users through an appropriate governance mechanism.

The political realities such as they are, the bill that is now before us seems to be moving as close to that as is possible.

And we would simply underscore our belief that in the end, the management of the FAA and the corporate governing structures are the issues, because if they are appropriately configured, the potential efficiencies that come out of this, as some of your other panelists described, are so huge that the issue of funding will not be a major problem long term. The only issue really will be in the short term.

And I would simply make the suggestion to you that if the funds that are currently in the trust fund could be made available in some way as a bridge to get to that nirvana, then the projected efficiencies on the other side of these reforms are so substantial that the current user fees—I understand there are taxes, and I understand the difference of the legal requirements—the allocation of those fees notwithstanding, which was a big part of the debate up here, of course, between the short haul carriers and the long haul carriers, that the funding is adequate to meet the—

Senator MCCAIN. You do both.

Mr. SMITH. Sir?

Senator MCCAIN. You do both.

Mr. SMITH. We do both. And if I had to guess, Senator, when it is all over, after the studies are done and the consultants that Mr. Crandall talks about, the structure will be not totally dissimilar to the way it is now with distance or revenue-based waybill and ticket tax, some fuel component, and probably a navigation and a departure component, which I know the short haul folks would like to avoid in its entirety, with those navigation and departure components probably paid on a tiered basis based on congestion costs.

So obviously, departures that are congested at a major airport are more expensive, perhaps, than a departure at a less-utilized airport.

But regardless of those details, if the governance structure is appropriate where the goals are congruent of the director and the management of the revised FAA, then I do not have any question about the fact that the current level of user funding can provide an adequate base for the FAA. But you have to get from here to there, and there is going to be some significant transition issues.

So I will just stop right there and be happy to deal with these issues in greater depth as you would like after the other presentations.

Senator MCCAIN. Thank you.

[The prepared statement of Mr. Smith follows:]

STATEMENT OF FREDERICK W. SMITH

Chairman, Chief Executive Officer and President, Federal Express Corporation
Chairman McCain and Chairman Pressler, members of the Committee, I am glad to offer our view on FAA Reform which I believe is imperative to ensure the future

viability of our U.S. aviation system. The years of FAA inability to manage the procurement and personnel systems of the Administration coupled with the over \$5 billion of diverted monies paid by aviation users to fund capital improvements in the aviation system are producing tell tale signs of a system in trouble.

Let me state that FedEx agrees this Industry must work with Congress to attack the financing issue head on. Air carriers are no longer in a "trust me" mode with respect to monies paid to the federal government to support the aviation system. We are also not prepared to pay any more for we contend that as an all cargo air carrier we are paying our "fair share". However, we are prepared to work with Congress to address creating a new funding scheme which cannot be diverted away from aviation purposes. In essence, we must all return to the fundamental agreement which purported to underscore the Aviation Trust Fund. In order to correct the wrongs aviation funding has suffered we must put in place a system of FAA financial accountability with agreed investment returns to the industry.

Let me turn to the other very important aspects of FAA Reform which FedEx endorses as part of Senate Bill 1239.

Clearly, personnel and procurement reforms are essential if FAA is to better manage its operations and provide the services essential to ensure system capacity and reliability. We also suggest the FAA should be subject to a newly devised public private audit of its operation costs and investments.

You have recognized that the FAA's means of operating through regulations must be held to the high level of technical competence that the industry manages its operations to. The regulatory reform provisions included in your bill are important but we suggest including a provision requiring all new FAA regulations be sunset within eight (8) years unless reissued by the Agency following a cost/benefit analysis in which the Industry is encouraged to participate. This will ensure that outdated FAA regulations do not impose operating limitations or costs on the aviation industry.

Finally, FedEx applauds your support of the FAA's role in representing the United States in international aviation issues affecting safety, technical and environmental issues. FAA must be the lead technology spokesman for the U.S. aviation interests addressed by ICAO and other UN organizations. This past August the White House underscored the need for such recognition when it commented in a report entitled "Goals For A National Partnership in Aeronautics Research and Technology" about U.S. leadership in the global aeronautics industry. It stated:

This leadership is founded on a strong partnership between private industry and the Federal Government and on aggressive pursuit of advanced technology. On this technology foundation the private sector has built an industry that produces the nation's number one manufactured export, that directly supplies almost a million high quality jobs, and that indirectly affects the lives of tens of millions of Americans everyday.

The report goes on to support the FAA view on engine emissions stringency which is based on required scientific evidence and rational cost effective actions. Realigning the certification of aircraft engine emissions to the FAA will ensure the U.S. aeronautic technology goals are advanced and that the technical interrelationship of engine performance, safety, noise and emissions is clearly codified in a single agency, the FAA.

Senators, in closing I want to express our appreciation for your efforts in advancing legislation which is necessary to ensure the continued success of our public private aviation partnership. We, at FedEx, recognize more information on FAA costs and allocation methodologies are needed to understand future funding requirements. We also recognize and support the need to balance the federal budget. We commit our continued involvement in assisting you in discovering the equitable answer to funding the FAA. It is in this Industry's best interest to ensure the preeminence of the U.S. aviation system.

Senator McCAIN. Mr. McClelland?

**STATEMENT OF REX MCCLELLAND, SENIOR VICE PRESIDENT,
CORPORATE SERVICES, DELTA AIR LINES, INC.**

Mr. McCLELLAND. Mr. Chairman and members of the subcommittee, it is a real pleasure for me to be here today to appear as a part of this distinguished panel and particularly the panel that just preceded us.

I, too, have submitted a longer statement, but I would like to take an opportunity to summarize for you as briefly as I can. Before I go on, I want to thank you, Mr. Chairman, and the sub-

committee in general for your support on the jet fuel tax extension. That is going to be a big help to the industry.

I also want to commend you and Senators Ford and Hollings for what we think is a rather far-sided reform proposal. For many years, Delta and, as you have heard today, the entire airline industry, without much success, have advocated various forms of reform to reorganize and provide financing and new structure to the FAA.

The current drive to balance the Federal budget—and, of course, you all have addressed that—has placed even greater pressure, as we all know, on the FAA. So S. 1239 is a major step, and I believe you said it, Senator Ford, in the right direction.

As the largest user of the ATC system, we experience first hand the costly inefficiencies of today's ATC system.

And because of these deficiencies—and you touched on this, also—we conservatively estimate that the delay costs attributable just to the system, directly to the system, cost us over a quarter of a million dollars a year in additional operating costs.

So failure to achieve some reasonable reform, reform as you are addressing here today, will only worsen those inefficiencies and increase our costs and the costs of our colleague airlines.

To its credit, I want to emphasize that the FAA has recently shown a new willingness to work with the airlines, to work with us on eliminating a number of operational restrictions.

And while these improvements have been put in place, we still have inadequate staffing levels in certain cases, obsolete and unreliable equipment and inefficient resources may all continue to plague the FAA's performance.

So it is time to give the FAA the resources and the flexibility that are necessary for it to perform its mission.

Mr. Chairman, your legislation recognizes that there must be, as an integral part of FAA reform, a solution for long-term funding requirements of the agency.

So it is time for Congress and the executive branch to guarantee that all moneys that are collected for FAA purposes will be expended on FAA capital or operating requirements and that they not be used, as they have been for so long, as a means for deficit reduction or for non-aviation activities.

Mr. Chairman, our testimony concentrates in the formal and otherwise document four important principles that we feel must form the philosophical framework for FAA reform.

First, the FAA must have complete access to the revenue stream, and that has been addressed rather well today. The most critical objective for FAA reform is a guarantee that funds contributed by the users for the FAA programs are available for their intended purpose.

There cannot be any support for new or different financing schemes unless Congress restores the integrity of the user finance system.

Delta is willing to pay its fair share. And if it is more, that would be fine, too, if we get the efficiencies out of the system, provided that that trust is restored.

There has been extensive debate here today, and there will be debate for a long time to come within the airline community about

your proposal to replace the existing excise tax system with a user fee regime.

While we are not ready to embrace this new approach, such a system could provide a more rational and equitable means of allocating costs. We simply do not know yet. Most importantly, this method would take the revenue stream outside the budgetary process.

And second, all system users should pay their fair share. That has been debated, and it will be debated again. One of the most inherent strengths in your bill is the attempt to more fairly allocate FAA costs.

The airlines and their customers have for far too long shouldered a disproportionate burden of FAA costs.

So it is time to eliminate the subsidy received by certain classes of users, as has also been addressed here today. If that means that the general treasury has to subsidize those that will not pay their fair share or cannot pay their fair share, then that is the way it ought to be.

The airline industry should not be exposed to new and additional costs until a thorough study has been performed to assess the needs and requirements, be it capital and operating or otherwise, of the FAA.

Additionally, an independent assessment of the costs driven by each segment of the industry must be conducted. I think I heard one of you mention earlier that we need to draw down the trust fund, and Mr. Smith mentioned that as well. We certainly support that.

Third, the flexible personnel and procurement rules will produce greater efficiencies, and we think lower costs overall.

The personnel and procurement provisions contained in this legislation will give the FAA for the first time ever needed flexibility to achieve substantial improvements in the management and modernization of the system.

In particular, Sections 201 and 203 of the bill will enable the FAA to efficiently staff its operation and acquire the technology and new equipment and tools that are necessary to enhance system capacity.

Finally, the FAA must be more accountable, more accountable to its customers, which are the users of the system. The greater autonomy given to the FAA under the bill will enable the FAA to better manage its resources and operate in a more businesslike fashion.

Additionally, the bill provides important changes in the relationship between the FAA and its customers. It requires greater accountability and establishes a framework for closer cooperation and consultation in developing new and essential systems.

These are all very important objectives that have to be preserved in the bill and, we think in many cases, strengthened. We welcome the establishment of a management advisory council to provide advice and counsel to the administrator.

This body should be relied upon as a sounding board on the significant regulatory initiatives that have major cost impact on aviation in general.

In sum, the legislation that you have introduced is generally consistent with the core goals that we believe must be contained in any FAA reform proposal. So we look forward to working with you to help improve the legislation consistent with our mutual objectives.

Again, Mr. Chairman, thank you very much for allowing us to testify here today and present all these views.

Senator MCCAIN. Thank you, Mr. McClelland.

[The prepared statement of Mr. McClelland follows:]

STATEMENT OF DELTA AIR LINES

Rex A. McClelland, Senior Vice President—Corporate Services,
The Air Traffic Management System Performance Improvement Act of 1995—
S. 1239

Mr. Chairman, Members of the Subcommittee, it is a pleasure and privilege for me to appear today with other airline executives to share Delta's views on your comprehensive legislation to reform the Federal Aviation Administration. We are most appreciative of your willingness to schedule this hearing so that the airline industry can provide testimony on your legislation—S. 1239.

Let me commend you, Mr. Chairman and Senator Ford, for putting forward a comprehensive and farsighted proposal to reform the FAA. The legislation represents a positive and innovative approach that recognizes the status quo is detrimental to the well being of the industry and the traveling public.

For many years, Delta and the entire industry have been advocating various reforms to the organization, financing and structure of the Federal Aviation Administration. We have endeavored, without much success, to secure reform legislation to improve performance and efficiency. The current drive to balance the federal budget has placed a new and different urgency to this long-standing goal. The mounting budgetary and operational pressures that confront the FAA require sensible solutions. S. 1239 is a major step in the right direction.

As the operator with the largest number of single daily operations in the United States (2633), we experience firsthand the air traffic control system inefficiencies that produce significant delays for our customers and additional costs for our airline. Delta incurs over \$250 million in additional annual operating costs because of the inability of the air traffic control system to efficiently accommodate our operations. If we fail to achieve reform now, the delays attributable to inefficiencies will worsen and the costs to Delta will rise dramatically.

To its credit, the FAA has recently shown a new willingness to work with the airlines to eliminate operational restrictions wherever possible and maximize system efficiency. While improvements have been made, inadequate staffing levels, obsolete, unreliable equipment and insufficient resources for critical programs continue to plague the FAA's performance. It is time to give the FAA the resources and the flexibility to perform its mission to meet future anticipated growth.

Mr. Chairman, your legislation recognizes that there must be, as an integral part of FAA reform, a solution to the long term funding requirements of the agency. It is time for Congress and the Executive Branch to guarantee in the statute that all monies collected for FAA purposes will be expended on FAA operating and capital programs and not be used as an offset for deficit reduction or to fund non-aviation activities.

Mr. Chairman, our testimony concentrates on four important principles and goals that must form the philosophical framework for FAA reform. Let me now address specific principles contained in S. 1239 that are essential to this effort.

1. THE FAA MUST HAVE COMPLETE ACCESS TO THE REVENUE STREAM CREATED BY USERS

The most critical objective for FAA reform legislation is a guarantee that funds contributed by the users for FAA programs are available for their intended purpose. There cannot be, in our judgment, any support for new or different financing schemes unless Congress restores the integrity of the user-financed system established for aviation. Delta is willing to pay its fair share provided that trust is restored.

The legislation that you have proposed, and the bill introduced by Chairman Duncan and Congressman Lightfoot, recognizes this basic principle. While the House and Senate bills take different approaches, the goal of protecting aviation revenues exclusively for FAA programs is fundamental to both bills.

There has been extensive debate and discussion within the airline community about your proposal to replace the existing excise tax system with a user fee regime to fund FAA programs. Delta is currently evaluating the economic and commercial impact of a transition from an excise tax financing mechanism to a user fee system. While we are not ready to embrace the user fee approach as the appropriate method for funding the FAA in the future, we do believe that such a system could provide a more rational and equitable means for allocating costs to users. Most importantly, this financing approach would take the revenue stream outside the Congressional budget process.

II. ALL SYSTEM USERS SHOULD PAY FOR THEIR FAIR SHARE OF THE COSTS

One of the inherent strengths of S. 1239 is its attempt to more fairly allocate the cost for FAA activities among all users. The airline industry and its customers have, for too long, shouldered a disproportionate burden of the FAA's funding requirements. Various government cost allocation studies confirm that the airlines already pay more than their fair share. It is time to eliminate the subsidy received by certain classes of users under the present financing system. If Congress believes that certain users cannot or should not be assessed their fair share, then the government must assume and shoulder the financial responsibility for the costs these individuals drive.

The airline industry should not be exposed to new and additional costs until a thorough study has been performed to assess the needs of the FAA. Additionally, an independent assessment of the costs driven by each segment of the industry must be conducted. Accordingly, we recommend that the additional monies to be derived from the airlines be deleted from the bill and that any near term shortfall be provided from the \$5 billion unobligated surplus contained in the trust fund.

III. FLEXIBLE PERSONNEL AND PROCUREMENT RULES SHOULD PRODUCE GREATER EFFICIENCIES AND LOWER COSTS TO USERS.

The personnel and procurement provisions contained in the Senate legislation will afford the FAA needed flexibility to achieve substantial improvements in the management of air traffic and the modernization of the air traffic control system. As contained in Sections 201 and 203, the bill enables the FAA to staff its functions in the most optimal manner and to purchase new technology and equipment necessary to enhance system capacity.

We recognize that there will be various attempts to weaken or limit provisions that exempt the FAA from various federal procurement and personnel rules. We are committed to working with the sponsors to preserve these critical reforms.

IV. THE FAA MUST BE MORE ACCOUNTABLE TO ITS CUSTOMERS

The greater autonomy given to the FAA in S. 1239 will enable the FAA to better manage the agency's resources and operate in a more businesslike fashion. Additionally, the bill provides important changes in the relationship between the FAA and those individuals that it regulates. It requires greater accountability and establishes a framework for closer cooperation and consultation in developing programs essential to an effectively functioning agency. These are all important objectives that should be preserved and strengthened.

The establishment of a management advisory council to provide advice and counsel to the Administrator on a wide range of issues is a welcome reform. This body should be relied upon as a sounding board on significant regulatory initiatives that have major cost impact on the aviation industry.

One of the most important elements of the Senate legislation is its attempt to reduce and lessen the FAA's regulatory burden upon all segments of the aviation community. We are especially delighted that the legislation would mandate that the FAA, and not the Environmental Protection Agency, will have sole jurisdiction over the regulation of aircraft engine emissions.

In summary, the legislation you have introduced with Senators Ford and Hollings is generally consistent with the core goals we believe must be contained in any FAA reform proposal. We look forward to working with you to improve the legislation consistent with our mutual objectives.

Mr. Chairman, let me thank you again for this opportunity to appear and present Delta's views. I would be pleased to respond to your questions.

Senator McCAIN. Welcome, Ms. Hallett.

**STATEMENT OF CAROL B. HALLETT, PRESIDENT AND CEO, AIR
TRANSPORT ASSOCIATION OF AMERICA**

Ms. HALLETT. Good morning, Mr. Chairman, Senator Ford. It is a pleasure to be here this morning.

And I think that I will serve as the cleanup batter on behalf of the 21 major commercial passenger and cargo air carriers which ATA represents.

I would ask that our full statement, on behalf of ATA, be submitted for the record.

Senator MCCAIN. Without objection.

Ms. HALLETT. Thank you.

I would like to begin by saying that the airline industry believes that S. 1239 will substantially improve the FAA operations by redirecting that organization's energies and by freeing up its revenue stream for necessary aviation-related investments.

And we want to work with you on this bill to make it the very best bill there is.

Mr. Chairman, maintaining the safe operation of the air traffic control system is, and it will remain, the overriding priority of the airline industry. However, the FAA has been unable to anticipate and to design and build and staff an air traffic control system which will meet the future needs of aviation.

Numerous studies have even concluded that an air traffic control system that is free of the financial dependence, the personnel limitations, the procurement handicaps, as well as the frequent political interference by other layers of government, offers the greatest promise for obtaining an air transportation system that is safely and efficiently and economically operated.

All of those studies have identified the major problems that your legislation addresses. I would like to just briefly comment on each one of them.

Even though you have heard so much of it this morning. This is new, some of it is reiterated.

First, the financing. Notwithstanding a surplus exists in the user funded aviation trust fund, the FAA's entire budget is subject to the Congressional Budget Act.

It is essential that control of the revenue stream be extricated from the existing budget mechanisms and that additional protections be established to reserve exclusively for aviation purposes all revenues collected after enactment of FAA reform legislation.

We must guarantee that aviation revenues be expended on the national aviation system. Your legislation establishes just that approach.

Mr. Chairman, the commercial airline industry also wants emphasize to that the industry now pays for more than its share of the costs of the ATC system services that are provided by FAA.

We are willing in all circumstances to pay the full share of the costs that we impose on the system.

We also expect other users to pay their fair share as well. So we applaud the provisions of your legislation that call for them to do so.

In the area of personnel, fundamental shortcomings in the Federal personnel system have added to the limitations of the FAA to provide the service required of its customers. Your legislation again

opens the door to meeting the personnel challenges which face the FAA.

Then there is the problem with FAA procurement. You have heard both of these mentioned this morning. They are equally troubling.

While Federal procurement laws properly rely on competition, they invariably lead to long, drawn-out acquisitions that many times result in equipment which is obsolete by the time of its delivery. And again, S. 1239 is right on target.

Mr. Chairman, I think the best way to summarize the way the members of the Air Transport Association feel is to ask you and the members of the subcommittee to evaluate the changes that you are proposing in a framework against which you should consider these changes.

First of all, would the FAA, in its role as a regulator, tolerate the manner in which it, the FAA, does business? For example, would the FAA grant certification for an airframe for which there were as little redundancy as there is currently in our antiquated ATC system?

Would the FAA tolerate an airline placing its flight crews on double shifts, overtime, and a 6-day work week, such as the FAA does, because of shortages of controllers and technicians?

And what kind of top to bottom inspection would a carrier have to endure if it had the number of shutdowns and outages which the FAA has taken at en route centers throughout the year?

Mr. Chairman and Senator Ford, I think that your legislation, if it results in an FAA capable of passing a level of certification and inspection requirements to which it subjects the private sector, will have truly met the mark. We want to work with you to ensure that that happens.

The airline industry does indeed stand ready to work with you in achieving the improvements in FAA performance that we all desire and that we believe you intend to achieve in this legislation.

And so we look forward to working with you in those areas where we do not completely agree and to further support those areas where we are in complete agreement.

I thank you very much for the opportunity to appear before you this morning.

Senator MCCAIN. Thank you very much.

[The prepared statement of Ms. Hallett follows:]

STATEMENT OF CAROL B. HALLETT

Mr. Chairman and members of the Subcommittee, it is a pleasure to appear before you today to discuss a most important and fundamental issue of concern to the airline industry, our passengers, and shippers—reform of the FAA.

FAA reform is a subject which has been discussed on and off for at least a decade, however, now, with the introduction of S.1239 under your leadership, we are on the verge of seeing action taken to remedy the institutional problems which have kept the FAA from performing its services in the best interests of the traveling and shipping public. We believe that your legislation will change the course of the FAA by redirecting its energies towards performance goals for personnel and procurement, not mere compliance with bureaucratic requirements, and by freeing up its revenue stream for appropriate investment.

By way of background, let me point out that during 1994, U.S. airlines enplaned approximately 519 million passengers. This represents an increase of more than 50 percent since 1984. U.S. airlines operated 7.4 million flights last year which, on a daily basis, averages 20,250 airline flights operated each and every day.

During the same ten-year period, the FAA's air traffic control system has imposed an average of between 700 and 1,100 flight delays of 15 minutes or more, each and every day. ATC delays now cost the airline industry and its users more than \$3 billion each year. This includes the millions of gallons of fuel burned while awaiting take-off, the cost of en route delays of all types and the incremental costs of flight crews, ground personnel and additional equipment and maintenance expenses. Equally important, but not counted, is the cost to you, the consumer, of wasted productivity while trapped in an aircraft rather than doing business, attending to legislative duties, or whatever.

Mr. Chairman and members of the subcommittee, the FAA's current air traffic control system simply is not capable of providing ATC services in an efficient and economical manner. And if our historical delay problems with the FAA—flight delays, procurement delays, cost overruns because of delays—were not sufficient evidence that this system is in need of drastic renovations, the five major outages at en route centers this year certainly provide the required proof. The status quo is simply no longer acceptable; dramatic change is needed.

The FAA's performance during the last decade reflects an inability to meet either the service or safety standards desired by the airline industry and the travelling public. Simply stated, the FAA has failed to anticipate, design, build, and staff an air traffic control system which will meet the future needs of aviation.

During the past ten years, a number of studies have reviewed the FAA, its structure, finances and performance. Each of these studies has concluded that an air traffic control system free of the financial dependence, personnel limitations, procurement handicaps, and frequent political interference imposed by other units of government, will do a better job of providing safer, efficient, and economical ATC services.

While the remedies offered by these studies differ, all of these studies identified the same major problems in the administration of the FAA—

- Lack of control over its financing
- Lack of flexibility regarding personnel and procurement
- Short tenure of the Administrators
- Interference by other government entities
- A bureaucratic culture resistant to innovation
- Inability to respond to changing requirements of the industry

In recent years, the shortcomings of the FAA have been underscored by:

- The excessive delay suffered by the FAA in recovering from the 1981 strike by the Professional Air Traffic Controllers Organization.
- FAA inability to bring on-line in a timely manner the principal components of its equipment modernization program, the Advanced Automation System, and the long delays and severe cost overruns associated with that program.
- The recent imposition of budgetary restrictions as a consequence of the ongoing debate about the federal deficit.

Let me comment on some of the critical issues with which we are concerned:

Financing—Notwithstanding a surplus in the user-funded Airport and Airway Trust Fund, the FAA's entire budget is subject to the Congressional Budget Act. While this subcommittee and the Appropriations Committees have invariably been responsive to our entreaties concerning spending priorities, the continuing discretionary budget squeeze leads us to the conclusion that the FAA's ability to provide needed services will likely be even more constrained in the future than it has been to date. We feel that it is essential that control of the FAA's revenues be extricated from the existing mechanisms and that additional protections be established to reserve exclusively for aviation purposes all revenues collected after enactment, and to guarantee that such revenues be expended on a schedule dictated by the needs of the aviation system.

Your legislation establishes just such approaches. The commercial airline industry now pays for more than its share of the cost of the ATC services provided by the FAA and is willing, in all circumstances to pay its full share of the costs we impose on the system. We expect other users to pay their share as well, and we applaud the provisions of your bill which call for them to do so.

Personnel—Personnel ceilings, restrictions on travel and training funds, federal pay comparability, limitations on relocation allowances, restrictions on part time help and a personnel evaluation system which has little relationship to the goals and objectives of its customers are but a few of the impediments to efficiency imposed by today's personnel rules. As a result of these human resource problems, the FAA does not have the personnel resources it needs.

Your legislation is right on target. It opens the door to rectifying these problems.

Procurement—While Federal procurement laws properly rely on competition, they provide losing bidders with numerous opportunities to protest and limit multi-year,

multi-program procurements. Coupled with Federal personnel policies which limit managers' ability to reward efficiency, these policies lead to a long, drawn-out acquisition process that often results in the FAA servicing equipment which is obsolete by the time of delivery. The cumbersome procurement system, funding uncertainties, and lack of incentives result in a lack of accountability, the inevitable result of which is the failure of the FAA to bring on-line needed innovations and technological enhancements in a timely manner.

Again, your legislation is right on target. It provides a creative solution to these problems.

As you look at the changes which you are developing, let me suggest a framework against which you should consider your legislation. Would the FAA, in its role as a regulator, tolerate the manner in which it, that is the FAA, does business? For example, would the FAA grant certification for an airframe for which there were as little redundancy as in our antiquated ATC equipment? Would the FAA tolerate an airline placing its flight crews on double shifts, overtime, and six-day work weeks such as the FAA does because of its shortage of controllers and technicians? And what kind of top to bottom inspection would a carrier have to endure if it had the number of shut downs and outages which the FAA has taken at en route centers this year alone? We should strive for an FAA capable of passing the same certification and inspection requirements to which it subjects the private sector, and we believe your legislation is a step in the right direction.

Mr. Chairman, there is one other matter contained in S. 1239 which I would like to address—section 113 concerning Aircraft Engine Standards. We strongly support inclusion of this provision in your legislation. The FAA already has authority to establish noise standards, 47 U.S.C. 44715, and fuel composition standards required to meet emissions rules, 47 U.S.C. 44714. It seems logical to us that these functions, together with emission standards, be consolidated in the FAA which possesses the technical competence to evaluate this issue and make sure that we maintain a safe, reliable air transportation system. Not only will the centralization of these responsibilities save money, the interrelationship between these responsibilities is necessitated by virtue of the fact that engine modification for noise purposes have a direct effect on emissions and vice versa. We applaud the inclusion of this provision in your bill.

Senator McCAIN. Ms. Friend, welcome.

STATEMENT OF PATRICIA A. FRIEND, PRESIDENT, ASSOCIATION OF FLIGHT ATTENDANTS

Ms. FRIEND. Thank you.

Chairman McCain, Senator Ford, thank you for inviting the Association of Flight Attendants to testify here today. We are here representing more than 36,000 flight attendants at 26 U.S. carriers.

You and your staff should be congratulated for your bold initiative to reform the Federal Aviation Administration.

While much of the current reform debate centers on the ability of the agency to properly maintain aviation traffic and to modernize the air traffic control system, equal consideration must be given to the agency's role in regulating airlines and protecting the safety and health of aviation workers.

Reform proposals have centered on three key areas: funding, modernization of the ATC and regulatory reform.

Adequate long-term funding is the basic requirement of any reform, and it is important that all users of the system provide their fair share for the services provided by the agency.

Without innovative funding approaches, reform of the FAA will be worth no more than the paper it is written on.

Modernization of the air traffic control system has focused on personnel and procurement reform.

We are encouraged by the commitment that you have expressed during previous hearings to work with FAA employee representatives on personnel reform.

Given the FAA's past management failures, it is critical that you work closely with these representatives to develop meaningful reform without meaningless antagonism.

My primary focus today is on reform of FAA's regulatory responsibilities. I wish to suggest three important areas that need to be addressed in your final legislation to improve FAA's ability to regulate the safety of the industry.

One of AFA's greatest concerns with the FAA is its dual mission. The FAA is the only modal safety agency with the mission to both regulate and promote a transportation industry.

This dual mission has brought us tragic results, and Congress should move to eliminate this fundamental flaw.

I will touch on two recent examples of FAA actions that are being considered solely for the economic benefits they provide U.S. carriers. Studies have shown that in the event of an aircraft emergency, the ability of passengers to exit an aircraft directly correlates to the number of injuries and deaths which occur.

In the 1991 runway collision at LAX Airport, 21 passengers who survived the initial impact subsequently died in the aisles waiting to exit.

As a result, the FAA proposed widening the access aisle to the over-wing exit from 6 inches to 20 inches. But the FAA suddenly changed its course after hearing airline complaints.

Now, nearly 4 years later and after only one additional study, the FAA has proposed reducing the regulatory requirement for passageway access from 20 to 13 inches and increasing the amount by which the seat overlaps the exits from 5 to 10 inches.

As the in-flight safety professionals charged with the safe evacuation of passengers during emergencies, we strongly oppose FAA's decision to side with the industry rather than retaining this important safety standard.

Efforts are currently underway at the FAA to allow additional aircraft to fly with one inoperative exit door or inoperative escape slide.

Aircraft are certified with a set number of exits to allow passengers to safely evacuate. Experience from aircraft investigations proves that some exits are often blocked or unusable in an actual emergency.

It is outrageous that the FAA is willing to compromise passengers' optimal chance of survival by reducing exit opportunities.

These are just two examples of why I strongly urge you to consider eliminating this harmful dual mission. If the promotion of the aviation industry represents an important Federal activity, I would urge you to place this responsibility with the Secretary of Transportation.

Better still, in this era of privatization of functions previously performed by the Federal Government, let the airlines promote themselves. Safety should remain as the primary province of the agency.

Equally important to the elimination of the dual mission is improvement in the FAA rulemaking process. You have taken an im-

portant step in your legislation by eliminating the excessive layers of bureaucratic procedure currently required to issue a safety rule and by adopting deadlines for FAA response to petitions for rule-making and limits on the time to finalize rules.

Section 104 of your legislation incorporates important rule-making changes. Yesterday I testified before the House Aviation Subcommittee and urged inclusion of this provision in their legislation.

However, I would urge you to go one step further by providing a mechanism to require the FAA to act upon emergency NTSB recommendations.

Beyond regulatory reform, I urge you to take this opportunity to provide aviation workers with whistle-blower protection.

Flight attendants and other aviation workers risk losing their jobs for reporting a safety violation to the FAA.

Enactment of such protection would increase the overall level of safety in the industry.

Just last month, a flight attendant lost his job for reporting a gross violation of a Federal safety rule. In order to make room on a full flight for an off-duty company pilot, a family was asked to relinquish the seat assigned to their 5-year-old child and to hold that child on their lap. The use of the seat and safety belt for any child over two is required by the FAA.

Prior to departure, the protest of the flight attendant crew was overruled by the pilot in command of the aircraft. Following the flight, the flight attendant made an internal company report of the incident and was subsequently reprimanded.

Unsatisfied with the company's negative response, he then reported the incident to the FAA. He was fired 6 days after speaking to the FAA investigator. The message to other employees was clear: Advocate safety at your own risk.

These basic enhancements to your legislation would go a long way toward strengthening FAA's ability to maintain the industry's safety.

I have been very concerned with legislative proposals that provide the FAA with complete independence from the Federal bureaucracy while providing little assurance to prevent undue industry influence.

I believe your legislative proposal is a step in the right direction to develop this important balance.

And finally, we are still very concerned with FAA's refusal to provide any attention to flight attendant health and safety. Flight attendants are not covered by the Occupational Safety and Health Act.

In 1975, the FAA claimed jurisdiction from OSHA over crew member health and safety.

However, to date the agency has failed to make any serious effort to address flight attendant health and safety concerns.

It is time to hold the FAA responsible for our health and safety beyond the narrow scope of crash survivability and to begin correcting flight attendant health data from carriers just as they currently do for on-time performance.

Flight attendants deserve to have an agency that provides a response to health concerns. If our members are willing to risk their

lives to save passengers from injury and death, the FAA should be willing to study and act on flight attendant health concerns.

Addressing the major concerns of flight attendants would not only improve the health and safety of my members, it would also strengthen public confidence in this important industry.

I urge you to adopt my recommendations before the committee begins markup of your legislation.

Again, thank you for your thoughtful reform approach to prepare the FAA for the 21st century. I am encouraged that this is a bipartisan effort, and I look forward to working with you as you move this legislation forward.

If you have any questions, I would be happy to answer them.

Senator MCCAIN. Thank you very much, Ms. Friend.

[The prepared statement of Ms. Friend follows:]



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Statement of

Patricia A. Friend

National President

Association of Flight Attendants, AFL-CIO

Before

Senate Committee on Commerce, Science & Transportation

Aviation Subcommittee

Federal Aviation Administration Streamlining Act of 1995 (S. 1239)

October 12, 1995



My name is Patricia Friend and I am the President of the Association of Flight Attendants, AFL-CIO, representing more than 36,000 flight attendants at 26 carriers.

Chairman McCain, Senator Ford and Members of the Aviation Subcommittee, I want to thank you for inviting me to testify today. You and your staff should be congratulated for your bold initiative to reform the Federal Aviation Administration.

This year, our union is celebrating its 50th anniversary. Half a century of experience has shown us that flight attendants, as in-flight safety professionals, save lives and prevent injuries. Just this summer, surviving passengers of the twin-engine plane crash in Georgia credited flight attendant Robin Fech for life saving preparations before the crash. Thanks to Robin's experience and training, many passengers were able to safely return to their families shortly after the crash. This is just one example of the value of flight attendants on board aircraft.

As the in-flight safety professionals, flight attendants have a great interest in the FAA reform. The FAA performs one of the federal government's most fundamental roles --- protecting the safety of airline passengers and crew. But the FAA's responsibilities do not end with safe transit of aircraft, passengers and cargo.

While much of the current reform debate centers on the ability of the agency to properly maintain aviation traffic and modernize the air traffic control system, equal consideration must be given to the agency's role in regulating airlines and protecting the safety and health of aviation workers.

From the length of my duty time to the safety checks I perform before each takeoff, nearly every aspect of my work life is regulated by the FAA. That is why it is important that flight attendants participate in this reform debate.

Flight attendants have been at the forefront of many safety issues, pushing the FAA to take action to correct known safety problems. Representatives of AFA frequently participate in National Transportation Safety Board (NTSB) investigations and FAA-sponsored working groups. It is from our perspective as the front line in aviation safety that I share flight attendant concerns relating to FAA reform.

There is near universal agreement that Congress should move swiftly to enact reform legislation. While AFA has seen important improvements under the current Administrator, the agency continues to face many challenges. As we prepare to enter the 21st century, our industry continues to expand at a rapid pace. With more daily flights by more carriers into a fixed number of airports, pressure on the FAA will continue to mount.

Reform proposals have centered on three key areas: funding, modernization of the air traffic control system and regulatory reform.

Adequate long-term funding is a basic requirement of any reform. It is important that all users of the system, including passengers, provide their fair share for the services provided by the agency and that the agency have the funds necessary to carry out meaningful reform. Without innovative

funding approaches, reform of the FAA will be worth no more than the paper it is written on.

Modernization of the air traffic control system has focused on personnel and procurement reform. I am encouraged by the commitment, Mr. Chairman, that you have expressed during previous hearings to work with FAA employee representatives on personnel reform. Given the FAA's past management failures, it is critical that you work closely with these representatives to develop meaningful reform without meaningless antagonism. We are all grateful for the excellent response air traffic controllers have shown during the growing number of computer failures. Reform should not prove detrimental to this important link to aviation safety.

My primary focus today is on reform of FAA's regulatory responsibilities. I wish to suggest three important areas that need to be addressed in your final legislation to improve FAA's ability to regulate the safety of the industry.

Eliminate Dual Mission

One of AFA's greatest concern with the FAA is its dual mission. The FAA is the only modal safety agency with the mission to both regulate and promote a transportation industry. This dual mission has brought us tragic results and Congress should move to eliminate this fundamental flaw.

All too often, the FAA has been criticized for its inability to quickly respond to known safety hazards and provide proactive leadership in aviation safety. In fact, past presidents of my union have testified before this Committee on various safety issues and the failure of the FAA to respond in a

timely manner. Too often, the agency has acted only after a known problem results in unnecessary death or injury. It is time for this *tombstone effect* to end.

Earlier this year, Newsweek magazine polled experts to identify ways to improve the FAA's safety record. One of the ten suggestions cited was the elimination of the dual mission. Just last month, the USA Today newspaper agreed, stating that the "FAA is hamstrung by a conflicting mandate," with the result being "too little, too late in safety improvements."

I will touch on two recent examples of FAA actions that are being considered solely for the economic benefits they provide U.S. carriers.

Studies have shown that in the event of an aircraft emergency, the ability of passengers to exit an aircraft directly correlates to the number of injuries and deaths which occur. To reduce risk, passengers must be able to reach exits and pass through the space afforded them to safely evacuate the aircraft. In the 1991 runway collision at LAX airport, 21 passengers who survived the initial impact subsequently died in the aisles waiting to exit. The FAA later proposed widening the access aisle to the overwing exit from 6 inches to 20 inches. The proposed rule for an increased distance for passageway access or removal of the outboard seat was based on evacuation research conducted in the United States and the United Kingdom.

This was not a question of the cost of compliance exceeding the projected benefits. The FAA found that the 1991 proposed rule would cost approximately \$4.1 million while providing an estimated

\$15.9 million in benefits. FAA issued a final rule in 1992.

Carriers quickly requested waivers and filed formal complaints, calling 20 inches unnecessarily wide and urging the FAA to conduct additional research. The FAA suddenly changed its course after hearing the airlines' complaints --- despite its previous support of a 20-inch rule. Now, nearly 4 years later and after one additional study, the FAA has proposed reducing the regulatory requirement for passageway access to emergency exits from 20 to 13 inches and increasing the amount by which the seat overlaps the exit from 5 to 10 inches. Is the economic advantage of seven additional inches so important as to risk the ability of passengers to safely exit an aircraft despite volumes of evacuation research and the experience of past fatal crashes? As in-flight safety professionals charged with the safe evacuation of passengers during emergencies, we strongly oppose FAA's decision to side with the industry rather than retaining this important safety standard.

In addition to this limitation in passenger exit opportunities, efforts are currently underway at the FAA to allow additional aircraft to fly with one inoperative exit door or inoperative escape slide. Aircraft are certified with a set number of exits to allow passengers to safely evacuate. Experience from accident investigations proves that some exits are often blocked or unusable in an actual emergency. Already, the FAA allows 5 wide body aircraft to be dispatched with an inoperative door or slide. The original intent of this exemption was to provide a temporary allowance until improved design and training could reduce inadvertent deployment of slides.

Allowing aircraft to fly when one exit is inoperable establishes a dangerous precedent. In 1985,

NTSB Chairman Jim Burnett testified before Congress that “any reduction in the number of existing exits can adversely affect the level of safety of the occupants.” It is outrageous that the FAA is willing to compromise passengers’ optimal chance of survival by reducing exit opportunities. Such a move certainly does not enhance passenger and flight attendant safety.

These are just two examples of why I strongly urge you to consider eliminating this harmful dual mission. In both cases, the FAA’s position is driven by its role in promoting the industry. Safety considerations clearly would dictate a different outcome. The success of our industry relies on the public’s confidence in airline safety. We must focus the FAA’s efforts solely on safety.

If the promotion of the aviation industry represents an important federal activity, I would urge you to place this responsibility with the Secretary of Transportation and not with the agency charged with protecting passenger and crew safety. Better still, in this era of privatization of functions previously performed by the federal government, let the airlines promote themselves. Safety should remain as the primary province of the agency.

FAA Rulemaking Reform

Equally important to the elimination of the dual mission is improvement in the FAA rulemaking process. You have taken an important step in your legislation by eliminating the excessive layers of bureaucratic procedure currently required to issue a safety rule and adopting deadlines for FAA response to petitions for rulemaking and limits on the time to finalize rules.

There is nothing today to require the FAA to respond to petitions filed to the agency. In addition, the time between issuance of a notice for proposed rulemaking and the final rule frequently stretches into years. Changes in the rulemaking process were first proposed in 1980 in a Government Accounting Office study and again urged in the 1988 President's Commission on Aviation Safety.

Going back to my discussion on the overwing exit, the LAX crash was not the first opportunity for the FAA to discover the need to revise its rule. On August 22, 1985, a British Airtours 737 suffered an uncontained engine failure and a major fire as it prepared to take off in Manchester, England. The take off was immediately aborted and rescue equipment arrived within 30 seconds. Still, fifty-five passengers and crew died from the fire, smoke and gas.

Passengers in that crash complained that lack of space between the seat rows at the window exit hampered the evacuation. In response, the British Civil Aviation Authority immediately issued an order stating that the distance between the seat rows at the window exits had to be increased or the seat closest to the window should be removed. FAA's response was to initiate research which it concluded in 1986, showing in fact, that the British rule did not go far enough. On the fourth anniversary of the Manchester crash, AFA formally requested the FAA to act on its research. However, it was not until months after the LAX crash in 1991 and after Congressional hearings that the FAA released its rule.

The ATR-42 crash in Roselawn last year is another excellent example of the slow reaction of the FAA to NTSB concerns and their impact on aviation workers. Within seven days of the Roselawn

accident, the National Transportation Safety Board recommended that the FAA ban the ATR-42 from flying in icy weather. The FAA did not respond, despite public and Congressional pressure. Due to the high respect afforded NTSB recommendations, our members who work on these airplanes were extremely distressed to be required to continue working under these conditions. Yet, the FAA waited another month before taking action. It is absurd that despite the findings of the NTSB, considered one of the world's leading safety agencies, the FAA did not act promptly to follow the recommendation to prohibit flights in icy conditions.

Section 104 of your legislation incorporates these rulemaking changes, by requiring the agency to respond to a petition within six months and complete a rulemaking within 18 months. Yesterday, I testified before the House Aviation Subcommittee and urged inclusion of this provision in their legislation. However, I would urge you to go further by providing a mechanism to require the FAA to act upon emergency NTSB recommendations.

Whistle blower protection

Beyond regulatory reform, I urge you take this opportunity to provide aviation workers with Whistle blower protection. Flight attendants and other aviation workers risk losing their jobs for reporting a safety violation to the Federal Aviation Administration. Enactment of such protection would increase the overall level of safety in the industry.

As you know, aviation employees are the critical link in airline safety. It is largely through our

diligence and hard work that the U.S. enjoys the world's safest aviation industry. Providing us with protection when we report safety violations should be a key element of this reform effort.

The FAA does not have the resources to fly on each flight or inspect each aircraft before takeoff. However, aviation workers do such safety inspections each day and should be encouraged to report any incidents that compromise the safety of the flight crew or passengers. They most certainly should not have to risk their careers to come forward with a safety problem.

Just last month, a flight attendant lost his job for reporting a gross violation of a federal safety rule (FAR 121.311). In order to make room on a full flight for an off-duty company pilot who was traveling for pleasure, a family was asked to relinquish the seat assigned to their five-year old child and to hold the child on their lap. The use of a seat and safety belt for any child over two is required by the FAA.

Prior to departure, the protests of the flight attendant crew were overruled by the pilot in command of the aircraft. Following the flight, the flight attendant made an internal company report of the incident and was subsequently reprimanded. Unsatisfied with the company's negative response, he reported the incident to the FAA. The company moved swiftly to terminate him. He was fired six days after speaking to the FAA investigator. The message to other employees was clear — advocate safety at your own risk.

Americans who use the aviation industry are safer when workers have stepped forward to help

federal authorities enforce safety laws. We deserve federal protection.

These basic enhancements to your legislation would go a long way toward strengthening FAA's ability to maintain the industry's safety. I have been very concerned with legislative proposals that provide the FAA with complete independence from the federal bureaucracy while providing little assurance to prevent undue industry influence. I believe your legislative proposal is a step in the right direction to develop this important balance.

Flight Attendant Safety & Health

Finally, I am very concerned with FAA's refusal to provide any attention to flight attendant health and safety beyond crash survivability. Flight attendants are not covered by the Occupational Safety and Health Act. When Congress passed this law, it provided for a partial preemption whenever another federal agency regulated the working conditions of employees. In 1975, the FAA claimed jurisdiction over crewmember health and safety. However, to date, the agency has failed to make any serious effort to address flight attendant health and safety concerns.

In 1990, the Association of Flight Attendants petitioned the FAA to act on its responsibility or cede jurisdiction. AFA has never received a response to this petition or documentation of health problems experienced by our membership. The FAA has not even responded to individual reports of occupational injuries.

It is time to hold the FAA responsible for our health and safety beyond the narrow scope of crash

survivability and begin collecting flight attendant health data from carriers just as they currently do for on time performance. Flight attendants deserve to have an agency that provides a response to health concerns. If our members are willing to risk their lives to save passengers from injury and death, the FAA should be willing to study and act on flight attendant health concerns.

Addressing the major concerns of flight attendants would not only improve the health and safety of my members but would strengthen public confidence in this important industry. I urge you to adopt my recommendations before the Committee begins mark-up of your legislation.

Again, thank you for your thoughtful reform approach to prepare the FAA for the 21st century. I am encouraged that this is a bipartisan effort. I look forward to working with you as you move this legislation forward. If you have any questions, I would be happy to answer them.

Senator MCCAIN. And I want to tell you we are going to invite you back when we have our hearing on airline food. I want to thank you for being here today and thank you for your important contributions to the safety of the industry.

By the way, on the instance you mentioned about the flight attendant that lost his job——

Ms. FRIEND. Yes.

Senator MCCAIN [continuing]. What is the follow-up on that?

Ms. FRIEND. The follow-up verbally from the FAA is that their investigation revealed there was no connection between the report and the termination of the flight attendant. We have not seen the results of their investigation in writing yet. This is only a verbal.

Senator MCCAIN. Well, I would appreciate it if you would keep Senator Ford and I posted on it, and the committee posted on it, because obviously there is—and I do not doubt your statement. If that is true, then there is something seriously wrong here.

Ms. FRIEND. And we will be happy to provide you with all of the data that we have on the incident.

Senator MCCAIN. Thank you very much.

Mr. Smith, what changes would you make to the bill if you were free to do so? I do not think we have to discuss again this problem of the new director of the FAA having the sole appointment power.

I think Senator Ford and I are going to look into that aspect of the bill. But what other changes would you like to see made?

Mr. SMITH. Well, I think, Senator, the issues that were dealt with a little earlier about the—the procurement issues are exceedingly important.

It has to be crystal clear in the structure of this new entity that the director, with the advice and counsel of the governance mechanism, which I presume would remain DOT in terms of the reporting relationship, and at least an advisory council, has the ability to commit the flow of funds for the technical modernization of the agency.

And then secondarily, that the personnel policies offer the equivalent flexibility as found in the private sector. The worst possible result would be for us as an industry and a nation to back in to the same situation they have in Europe, where you have user funding but in essence civil service type of costs, because now, the situation would really become just terrible.

I mean, there would be no cost benefit analytical capabilities whatsoever. It would become immediately politicized.

So that would be the only—the two things that I could add to the comment I made before about the corporate governing structure.

I mentioned yesterday over on the House side that I did a study for the Southern States Energy Board one time under the auspices of Governor Baliles, which was sort of interesting because he ended up being the chairman of the Airline Commission.

And TBA at that time had gone through one of the largest write-offs in history. In fact, I think other than the write-offs required by the pension accounting standards, it remains the largest single commercial write-off in U.S. history.

And a big part of that problem was the corporate governing structure, which was a three-person triumvirate of full-time direc-

tors. They did not have a CEO per se, but that was not a good structure.

So you have to give a lot of thought to those issues, that the goals are congruent. So that would be the two things that I would mention, that the procurement and obligation capabilities of the director have to very clearly spelled out, and secondarily, that the personnel policies have to let them re-engineer the process they deal with and pay incentives and market-based salaries to people to do the work.

Senator MCCAIN. Mr. McClelland, I ask you the same question.

Mr. MCCLELLAND. Yes, sir. We certainly support those additions or those changes and a few others, just one.

The automatic 10 percent that the industry would be expected to pay in the beginning, we think you need to really examine that. Someone mentioned earlier using the trust fund to bridge if there is indeed a need after a thorough assessment of—

Senator MCCAIN. The automatic 10 percent, it is a restriction of award, no more than 10 percent. I understand your concern about it therefore being automatic. But that is not the intent.

Mr. MCCLELLAND. Perhaps that is not the intent, but that is of great concern.

Senator MCCAIN. I understand.

Mr. MCCLELLAND. And on the trust fund, we think you need to look very carefully at maybe hitting that head on, because it is not clear that that is the intent, that the trust fund would indeed be drawn down, would indeed be used for its originally intended purposes.

We think we need to make very certain—

Senator MCCAIN. Let me just respond to that, because it has come up several times. There is no possible way we can bridge this gap without using the surplus in the trust fund. The legislation is based on the premise that we draw that additional \$2 billion down while we make those decisions as to how we make up the funding shortfall.

So please be aware that we are cognizant of the importance of that aspect of the trust fund. Otherwise, the whole—the train does not leave the station. The plane does not take off, I guess, may be a better—

Mr. MCCLELLAND. I am glad we brought it up, because we need that reassurance.

Then we would ask that you really look thoroughly and carefully at the advisory council. They need to be careful appointments with knowledgeable people. They really need to look carefully at the new assessment at the FAA's actual requirements for capital and for money in general.

Those are the basic changes, in addition to what—and, of course, keep—we have to make sure that the revenue stream, absolutely the revenue stream, is outside the budgetary process.

I think you have addressed that already.

Senator MCCAIN. I understand that. And if I might make an additional comment. Taking the airline trust fund “off budget”—aviation trust fund “off budget”—does not increase any funding to it.

And so those that somehow allege that all we would have to do is take it off budget and that solves the problem, you still do not

solve the problem with a \$2 billion shortfall into the aviation trust fund.

Now, I understand one impact of taking it "off budget" is it cannot be raided for other uses, et cetera. For that to be the nirvana is a gross misreading of the financial shortfalls that we face.

Which brings me to Ms. Hallett. Ms. Hallett, is the ATA's position that they are in favor of an independent FAA?

Ms. HALLETT. I think it is fair to say that we are supportive of an autonomous FAA. It is a decision that was made by the board in lengthy discussions, that the right approach is autonomous, but we also have the position that we want to work with you, as well as with Mr. Duncan, in ensuring that whatever becomes the final vehicle does reflect autonomy and certainly certain aspects of an independent FAA.

Senator MCCAIN. In your testimony to the House yesterday, you said specifically, "We support an independent FAA."

I was a little curious.

Ms. HALLETT. I was asked that question yesterday, and I also made the reference to autonomy. I was very specific, in fact, about referring to an autonomous FAA.

Senator MCCAIN. As you know, Senator Ford, who is my partner, has—

Senator FORD. You took a long time to come out with that. [Laughter.]

Senator MCCAIN [continuing]. Has long advocated an independent FAA. I have not been particularly adverse to that, but I hope that there is an appreciation that without administration support, we are wasting our time.

And that does not mean we are driven completely by the administration's views, but I do not see the ability to override a Presidential veto, nor would we want to go through—would we put the Senate through that kind of exercise with all our other priorities.

So I am glad that you support a "autonomous" FAA, and I would be curious how that differs from what is in our legislation.

Ms. HALLETT. Well, I think that it is simply a matter of some tweaking here and there. In fact, our board started out supporting an independent FAA.

And then at the last board meeting, there was further discussion, and they felt more comfortable with something in between independent and autonomous. I think that was the reference I made yesterday.

Senator MCCAIN. Thank you.

Ms. Friend, I want to ask again: Are you deeply concerned that an independent or quasi-independent FAA would still fall prey to ignoring the recommendations of the NTSB and other safety-related matters.

Ms. FRIEND. I think that depends on how much influence the industry is given over the newly independent or newly autonomous agency.

If, for example, this advisory committee were to be made up with primarily members of the industry, we would be extremely concerned. We think it would probably just be easier to give the safety oversight to the Secretary, as we said, or the promotion to the Sec-

retary and let the FAA deal with the safety issue without undue influence from the industry.

Senator MCCAIN. Thank you.

Senator Ford?

Senator FORD. Thank you, Mr. Chairman.

My dilemma in some respects is that we find the shortfall, and it is estimated as such, and that is the best figures we have to be \$10 billion to \$12 billion. And if we do not do something as we are anticipating here, or attempting to do here, we will eliminate a number of services.

And in all likelihood, the services affected would be those that are the least cost beneficial.

And that is like carrying the mail. The first ones to get hurt are the small communities. Federal Express is now coming to the mountains, and I want you to know, Fred, I appreciate it.

With a new runway, and we are getting ready to lengthen that. You can bring bigger airplanes in there, if you want to. But I am grateful to you. And just the idea that you are there means a great deal, and I want you to know I appreciate it.

Let me ask you something, Mr. Smith. If the governance board is established with everything else, how do you have input into the day-to-day operation and the policy of the FAA?

Could we set up something like, I do not know—in my state, we have fish and game. I want to tell you, that is something else. Each district sends five names to the Governor. And from that, the Governor picks the new members of the commission.

Could we do something like that in the industry?

Everybody have a piece of the governance board, and from the industry they send two or three names. Are we getting too political? If we just leave it up to the Administration, I am kind of afraid that he will all go one way.

It is like the fellow that died and had two wives. They said, "Where do you want to be buried?"

And he said, "In the middle, but tilt me toward Tilly." [Laughter.]

Senator FORD. And so I am afraid the director might tilt toward Tilly, and I do not want that to happen. Do you follow what I am saying if we get a balance that the industry all across the board is comfortable with, I would like to try that.

Mr. SMITH. Well, Senator Ford, I completely agree with what you are saying. I think that the makeup of the advisory council ought to represent the specific components of the industry with nominations provided and then selected by the director or the Secretary of Transportation or whatever the case may be.

The worst possible result would be to get an advisory council that does not represent the various components of the industry and that does not have cognizance of the twin pillars of the industry, the safety aspects and the financial aspects.

So I think that the legislation should codify the way that advisory council is constituted, certainly not specifying the names, but how it would be selected.

And if it is not, I think what you would find pretty quickly is that it either becomes just a rubber stamp or a collegial type of body and that it does not represent the various interests.

Senator FORD. I think the language of the bill says "sole discretion of the director."

Mr. SMITH. I do not think that that is—I do not think that is a wise construction. Now, it will end up, I think, that when you try to do that, there will be a lot of people that want a seat at that table, so to speak.

Senator FORD. Do any of the other witnesses have anything different or—

Mr. McCLELLAND. Just to supplement it, I certainly agree with that. Some airport authorities legislation have specific requirements for professional people, from lawyers to engineers to financial people, and that sort of thing. You might want to consider something like that.

The Nashville Tennessee Authority bill or legislation has that kind of language.

Mr. SMITH. We have it in Memphis, that so many people on the airport commission have to have an engineering background, aviation background. And it ensures—

Senator FORD. Well, if we take it from the industry itself, then we would get that variety, would we not, if possible?

Mr. SMITH. Well, I think you would, but I mean, I think—

Senator FORD. We would not say you have to be an engineer for the air cargo folks.

Mr. SMITH. No, sir.

Senator FORD. But the air cargo folks make a decision that this individual or these two individuals will represent us best. Then you put them on that list, send them to the Secretary The angels that give us the peanuts even would like that, I think.

Ms. FRIEND. Senator—

Mr. SMITH. Well, I think that is the way you will have to do it. It will be how you set those things that will be the controversial issues. But that advisory has to represent the key components of the industry. You know, general aviation has to be there.

The military has to be there. The air crews have to be there. The air transport folks have to be there in the various flavors and sit on that advisory council and watch these deliberations.

I have to tell you, I think that at the end of the day that if this is carefully constructed, this can be a very beneficial thing for aviation. I listened to the flight attendant's testimony and I read the one yesterday.

And I sit in the Air Transport Association with a majority of the talk and comments and all about safety issues concerning passengers. So I am a fly on the wall, so to speak.

And I think there is much more goal congruence there than perhaps the air crews think.

And it really is—most of the carriers want to do everything that they can possibly do enhance safety, because, as I said yesterday, Mr. C.R. Smith summed it up in his famous statement when he was asked what was necessary to make American Airlines successful.

He said, you know, "Fly safe and answer the expletive deleted telephone."

That was the essence of the airline business. The problem comes in when you get into the cost benefit analysis, you know, where you

get to the point where obviously, if you are an air crew, there is no expenditure that is too much in order to enhance the survivability or the safety if you are in one of these untoward accidents like happened in that 737 in Manchester.

Then on the other side of the coin, obviously there are sometimes just astronomical costs that come with marginal improvements in safety.

So one of the best things I think to come out of this whole thing, if this governance structure is carefully constructed, is that the folks would be sitting around at an industry level around the same table, which, because the flight attendants have their council, I am sure, their governance council, and the airline pilots have their council, Air Transport Association, but rarely do they ever sit down really in the same type of an environment.

And that may be one of the good things that comes out of this.

I do not think you will ever completely bridge the gaps, but you would provide a forum there where this debate can take place on a more quantitative basis.

Senator FORD. Does anybody else have any comment as to the question?

Ms. HALLETT. Senator Ford, I would just say that I think this is very reflective. You have heard from five different carriers this morning commenting about this, and they are all so close in their individual statements in terms of how the ATA members feel about this.

And I think it is very important that I just emphasize this is an area where, with very minor change, I think we will all be in total agreement.

Senator FORD. Mr. McClelland, it is my understanding that your responsibilities include all financial matters relating to airports.

Would you share with the committee your thoughts regarding the adequacy of the current Federal programs to provide long-term capital financing needs for airports?

Mr. MCCLELLAND. Senator, I will be glad to do that. First, we think Congress, for example, needs to address the PFC issue again.

In 1990, we were told, all of us were told, including the Congress, that the airport operators would need and use this money, the revenues from PFCs, for additional capacity at airports, meaning primarily runways and the airfield improvements.

And it is my understanding that a recent GAO study indicates that about 68 percent of the revenues have gone to new terminals, to airport access roads, to debt service and the like.

And the controls, as you know, are very limited, if there is any control, over what the funds can be used for. So that is sort of the back end part of your question.

At the larger airports, at the 50 largest airports, for example, they are pretty much self-sustaining. We argued in 1990 and before they did not need PFCs. If they had a viable program, we would support it, we would help pay for it.

But I think it is time for Congress to come back in and take a fresh look at the PFCs generally.

Senator FORD. Do you believe that privatization of airports may provide a valuable alternative to financing some—financing from

users through AIP and PFC? It is a little bit strange for an airport, you know, to take all this money and then take it downtown.

And that is not—if you understand what I am saying. I think it ought to be there and be useful and help you do a better job. If you do a better job, you are going to have more passengers. You are going to stir more revenue and maybe drop the price, and therefore you get more.

There are a lot of things that could be done, if you keep it in the avenue, or, as we would say down home, between the white lines. What about privatizing airports?

Mr. McCLELLAND. Well, privatizing, if that term—and it means a lot of different things to different people, but if—

Senator FORD. It is in the eye of the beholder, I guess.

Mr. McCLELLAND. Exactly. If it means transfer of ownership, we have opposed that, and we continue to oppose it for reasons that you mentioned: the money downtown.

On top of that, privatization in that sense—and I will address the other sense in a second—is simply—we look at it as an LBO. Somebody has to pay that cost or that profit. Somebody has to—and that is us.

And somebody has to deal with the long-term profit motives of the operator, and that is us and our passengers. So we continue to oppose privatization if it means transfer of ownership.

On the other hand, while I do not think it is in effect yet, what Indianapolis seems to have done is they have just simply licensed an independent company, VAA in this instance, to operate the airport.

And if that operator can do it more efficiently than city government or county government, then certainly we would be supportive of that, provided the limitations remain on revenue diversion that exists in the law today.

Senator FORD. Does anybody else have any comment as it relates to—

Mr. SMITH. Sir, I just wanted to make this one comment. I would just point out to you that we are one of those airports in Memphis that are exactly what Senator Hutchison was talking about.

We started a project down there of adding a new runway, and we have the runways that are already in existence, which is a key component of added capacity in the national aerospace system.

And the FAA at the time said, "Well, there is no problem on this project. We want to get it started. We issued these LOIs on an annual basis."

And then we got down the road and all of a sudden we have a case where we are about \$50 million short.

And that is why it is so important that this legislation allowed, however the long-term capital improvements to the national aerospace infrastructure are, and that there be multi-year obligations.

Senator FORD. And then you borrowed probably on the LOI.

Mr. SMITH. Yes, sir. Well, we got the LOI for the first part of it. Then there is supposed to be a second LOI now because of the fund. The FAA said they cannot issue it, and it has created a real major problem.

Senator FORD. Well, Mr. Chairman, I will not impose on the witnesses any longer. Let me just ask Ms. Friend one question, and that will be my final question.

You mentioned the problems of the dual mission of FAA. Can you cite specific examples for this senator where the dual mission has caused a problem?

Ms. FRIEND. Well, specifically, I spoke in my testimony about the conflict over widening the access to exits for evacuation purposes, that in fact after the Manchester, England accident, the British Civil Aviation Authority immediately mandated more space between the seat rows for better access to the exits.

The FAA studied it, found in fact it was a legitimate act on the part of the U.K., but in fact that their rule had not gone far enough. They issued a notice of proposed rulemaking.

In their study they found in fact that on a cost benefit analysis, that there would be a cost of \$4.1 million as opposed to benefits of \$15.9 million. So the rule is out there.

Suddenly, the airlines begin to register their complaints. The FAA begins to drag their feet. And then 4 years later, they are now proposing to in fact reduce the access.

The cost benefit analysis is in favor of widening it. We cannot see or imagine why they are changing their position, other than influence from the industry. The industry is obviously making some argument to them that this would be harmful to them.

So in spite of their own studies, they are changing their position because they have, once again, tipped the balance of promoting the economic future of the industry as opposed to promoting the safety for the traveling public and for the crews that work on the airplanes.

Senator FORD. Thank you very much, Mr. Chairman.

Ms. HALLETT. Mr. Chairman, might I just make one comment in response to Mrs. Friend, because I think that it is so essential to point out that our No. 1 priority throughout the industry is safety.

And any statements or any information that we would share with the FAA in written testimony or through the ARAC process, while yes, they as well as we take into consideration cost benefit, nonetheless safety is always the highest priority.

Senator MCCAIN. Thank you, Ms. Hallett.

I want to say in response that Senator Ford and I have an agenda. One of them is aviation safety. Another one is this U.S./U.K. situation, the whole status of future international airline agreements and why the United States seems to be playing catch-up in this whole business.

Senator FORD. While we are subjected to all the costs and everything, and everybody else is free. We have to compete with that higher cost and cannot get beyond the door. All of you have been involved in all this stuff.

And somehow or another, if we do not be aggressive to give support to our entities here, I agree with the Chairman—I apologize for interrupting, but it is just—something has to be done. We cannot just pussyfoot around.

It is about time we started making some real effort.

Senator MCCAIN. We intend to have a hearing or hearings on this whole issue of aviation safety, crew training, commuter air-

craft pilot skills, which I understand has been—steps have been taken to remedy.

There continues to be media attention to this issue of airline safety, and we will continue to make it our highest priority, Ms. Friend, because it has to be our highest priority.

And we are all in agreement that it is our highest priority. The question is—it is like going to heaven, how do we get there since we all want to reach it? But the question is what we do in the meantime.

So we will—I want to assure you that the highest priority of this subcommittee is aviation safety, and we will continue to do whatever we can to enhance it, working with all interested parties.

Part of that would be trying to reconcile this relationship between the NTSB and the FAA, to be frank with you.

Thank you very much for coming today, and I appreciate your patience. Again, thank you very much.

[Whereupon, at 11:50 a.m., the hearing was adjourned.]

APPENDIX

QUESTIONS ASKED BY SENATOR PRESSLER AND ANSWERS THERETO BY ROBERT L. CRANDALL, CHAIRMAN, PRESIDENT AND CEO AMERICAN AIRLINES

QUESTION 1. Based on your experiences dealing with the FAA in the past, are you concerned this bill gives too much power to the FAA Administrator?

Answer. No. As passed by the Committee, this bill creates careful checks and balances on any abuses by the Administrator. It provides an oversight role for the Secretary of Transportation that is, correctly, limited to major actions and policy decisions. More importantly, the creation of the Management Advisory Council, if implemented correctly, will provide an excellent balance and bring much needed sunshine into the decision-making process at the FAA. Any backtracking from the fundamental structure of the Management Advisory Council and its ability to function would cause me great concern.

QUESTION 2. The FAA has projected an aggregate \$12 billion funding shortfall between now and FY 2002. Under the current funding structure and budget caps.

a) What might be the effect of such a shortfall on air carrier operations?

b) What might be the resultant financial impact to the industry?

Answer. The potential for serious disruptions is immense. The Senate should be congratulated for tackling the politically unpopular job of dealing with this potential funding shortfall. With that said, I do not believe that every dollar spent by the FAA is automatically a dollar well spent. One of the reasons that I strongly support this bill is that it creates many more incentives for the FAA to spend its limited resources wisely. The bill recognizes that the goal is not only to achieve efficiencies within the FAA, but to modernize the management of air traffic control in such a way that the industry can not only provide a safer transportation system, but a more efficient and productive one as well. We need the funds, but more importantly, we need to spend them wisely.

QUESTION 3. Some groups have recommended implementing only personnel and procurement reforms within FAA and taking a "wait and see" approach on budget and funding issues. If FAA's budget projections are correct, what might be the effect on the industry in that period? **Answer:** We must move forward as quickly as possible to resolve the financing issues. This process should not be postponed. To understand the cost structure of the FAA and even begin to consider alternative funding mechanisms, there must be months and months of intensive study and accounting first. The longer we wait to begin this process, the further behind we will be in getting the job done. I do not advocate rushing into a new financing system, but I do believe we must get started on a process that will lead in that direction. I believe that the Senate bill sets forth a reasonable process and timetable to get the facts on the table that are necessary before any future financing decisions can be made. The time to start is now.

QUESTION 4. S. 1239 allows user fees to replace the existing passenger and cargo waybill taxes. Taxes appear to be a relatively straight forward method of collecting funds, but getting the money into the system to satisfy FAA and industry needs has its flaws. Can you suggest a simple, fair user fee structure to replace air carrier taxes?

Answer. There are any number of ways to establish a fee structure. And while creating a system that is both simple and fair is a good goal but often not possible. The current ticket tax is an example of a revenue collection that is simple—very simple—but it is demonstrably not fair. The price of a ticket has absolutely nothing to do with the service provided by the FAA and, in particular, air traffic control

services. The key is to seek a balance. But, to me, fairness is a more important virtue than simplicity. The example raised in the hearing by Herb Kelleher, a departure tax, is also simple, but Southwest believes is unfair. The process set forth in the Senate bill is the best way I know to debate this issue and craft a balance that is first and foremost fair and then as simple as possible.

QUESTION 5. There is some concern that the user fees will be "gamed" by the airlines to help establish competitive advantages.

a) Should fees be constructed to prevent that from happening and, if so, how?

b) If one or more airlines go out of business as a result of inadvertent competitive advantages in the user fees, does that undercut the FAA's overall business base and income, eventually affecting the remaining carriers?

Answer.

(a) Certainly fees should be set in a manner so that they cannot be "gamed" by carriers for competitive advantages. (In fact, however, today there is considerable cross-subsidy with ticket tax financing—perhaps there is already gaming going on.) The answer to this problem is contained in the bill itself. If any new fees are approved, they must be related to the cost of FAA services, they must be fair, and they must take into account the impact on all sectors of the industry.

(b) It is important to remember that what has driven much of this debate is the fact that Congress has determined in its Budget Resolution that the expenses of the FAA must either be cut drastically or paid for by increased industry taxes or fees. As pointed out in your second question, the FAA estimates that the total shortfall will be \$12 billion in the next seven years. Today, the general fund pays for 50 percent of the operations of the FAA. The principal burden on the industry will come from making up for this lost federal government support. That is why this bill is so important. Recognizing that increased funding is necessary, this bill creates a mechanism whereby the industry, for the first time, can have a chance to know more about the plans of the FAA and have a voice in advising the agency on how to spend its limited resources. Most important, it directly connects the financial support of the agency to the services being provided. If the fees are set fairly, as the bill requires, in some general relation to the services provided by the FAA to those paying, then no airline should be placed in jeopardy. Any airline that tells the Committee it could not pay its fair share of air traffic control costs is, in so doing, implicitly telling you that the current law is grossly unjust. Finally, there is absolutely no reason to believe that even if an airline went out of business (something I don't believe will happen) that there would be any adverse impact on the system. If, under this premise, one carrier was disadvantaged, then, implicitly, others would be advantaged. Those whose burdens are lowered would be able to increase capacity accordingly. Any change that is meaningful hurts some more than others. They key, which the bill incorporates, is that any fee system be fair.

QUESTION 6. Regional air carriers are extremely important to states represented by many Senators on this subcommittee. I am concerned that budgetary constraints within the FAA will adversely affect service to states such as South Dakota. I am also concerned about fees eventually being cited as another cost factor to rationalize cuts in service.

a) What impact do you anticipate proposed user fees would have on your affiliated regional carriers?

b) What assurances would states like mine have with respect to air service under the new funding structure?

Answer. In the long term, I believe that the bill will result in improved opportunities for service to small communities. One of the principal reasons that small communities cannot get better service is the severe congestion at large airports—particularly slot controlled airports like O'Hare. The goal of the bill to create a more efficient air traffic control system that can be modernized so that the system can accommodate more

capacity at higher levels of safety. At airports such as O'Hare, carriers must limit their services to the markets that have the

highest volumes of traffic. As capacity expands, we are able to serve more and more markets through our regional affiliates. These additional markets are the less dense routes such as those referred to in your question.

The bill requires that any fee system take into account its impact on all sectors of the industry, which obviously includes regional carriers. There is no benefit for air traffic control if fees are set too high at any given facility to prevent its use. Therefore, I have no doubt that any new fees will take this factor into account. American Eagle would be adversely affected by a fee system that prices ATC services at small airports too high. We believe that any system will take into account the concerns raised by your question. Moreover, there are many safeguards built into your bill, including Congressional review on an expedited basis. It is ironic that

those air carriers who are opposed to the fee system by and large do not serve any rural areas or small communities.

I would also note that the bill provides for up to twice the current funding level for Essential Air Service. Moreover, American has no objection to having general aviation exempt from fees as long as there is a recognition that their portion of the costs of running the system should continue to be funded by general revenues and not cross-subsidy.

QUESTIONS ASKED BY SENATOR PRESSLER AND ANSWERS THERETO BY PATRICIA A. FRIEND, ASSOCIATION OF FLIGHT ATTENDANTS

Question. Are there any aspects of this bill which your association feels could negatively impact safety?

Answer. We are concerned with the establishment of a Management Advisory Committee (Sec. 112) and the Commerce Committee's decision to allocate a specific number of seats to carriers. By designating the number of seats available for a specific interest within the aviation industry, the Committee may exclude the full representative of the industry.

Specifically, we are concerned with the Federal Aviation Administration's dual mission to both regulate and promote the commercial airline industry. By providing this interest with the largest share of seats on the Council, the conflict within the agency will be further aggravated.

The Association of Flight Attendants, AFL-CIO, urge you to drop this provision from the legislation.

Question. How do the provisions related to time limits on NPRMs and Advanced NPRMs affect safety issues of concern to your members?

Answer. We strongly support Section 104, a provision requiring the Federal Aviation Administration to respond to petitions and issue rules in a timely manner.

Answer. Often ten, even twenty years, will pass between the time the FAA identifies a safety hazard and new safety rules are issued. It is our belief that this slowness can be remedied through this provision of the legislation.

As early as 1980, a Government Accounting Office study, "How to Improve the Federal Aviation Administration's Ability to Deal with Safety Hazards," criticized the unresponsive nature of FAA's rulemaking process. Ironically, the FAA responded that it would streamline the rulemaking process and eliminate unnecessary levels of review. Such reform efforts to date have been insufficient.

In 1988, the Congressionally mandated President's Commission on Aviation Safety issued a frank report on a wide range of aviation safety problems. The report found that the "current rulemaking process is slow and unresponsive" and "needs to be streamlined."

One example the 1988 Commission identified concerned improving small aircraft survivability. The report stated, "In 1970, the National Transportation Safety Board made recommendations to strengthen seats in small aircraft based on accident investigations. After sixteen years, on December 12, 1986, the FAA published a notice of proposed rulemaking in the Federal Register. On July 29, 1988, the FAA submitted the proposed final rule to the Office of the Secretary of Transportation for review."

Based on its review of the rulemaking process, the Commission recommended that "the rulemaking process be streamlined and that a disposition date be specified for all rulemaking procedures."

In addition, the FAA frequently fails to respond to petitions filed by parties interested in the safety of the industry. For example, on May 8, 1990, the Association of Flight Attendants, AFL-CIO, filed a petition for rulemaking requesting the FAA issue occupational safety and health standards for airline crewmembers. To date, AFA has received no formal response from the FAA addressing the concerns raised in the petition or rejection of the petition.

While we cannot anticipate that the agency will always respond favorably to petitions filed by the union, flight attendants deserve to receive a timely agency response by either initiating a proposed rulemaking or denying the petition. Even a denial of a petition would provide petitioners with the opportunity to seek Congressional action or other opportunities to address the concerns raised in the petition.

Question. Why does your association particularly like the provision in this bill which require action on petitions? Are there specific instances when the FAA has failed to act on a petition?

Answer. The FAA frequently fails to respond to petitions filed by parties interested in the safety of the industry. For example, on May 8, 1990, the Association of Flight Attendants, AFL-CIO, filed a petition for rulemaking requesting the Fed-

eral Aviation Administration to issue occupational safety and health standards for airline crewmembers. To date, AFA has received no formal response from the FAA addressing the concerns raised in the petition nor has it received a rejection of the petition.

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Question. Can you elaborate on why, in your membership's view, significant reform, including funding reform, is necessary at the FAA in the near future?

Answer. As more daily flights by more carriers fly into a relatively fixed number of airports, the pressure on the Federal Aviation Administration to maintain airline safety mounts. Yet, at the same time, the agency is being asked by Congress and the Administration to do more with fewer resources. This alone requires the agency to undergo significant reform.

Earlier in its history, the FAA monitored a relatively fixed number of flights by a small group of commercial carriers. Today's commercial airline industry is fundamentally different. Commuter flights have grown exponentially as have the number of small start-up carriers. The ability of the FAA to monitor the safety of these developments has come under increased scrutiny.

This was shown two years ago, when an ATR-42 aircraft crashed in Indiana. As reports would show in the aftermath, the agency may have been able to identify problems associated with the aircraft prior to this incident. The New York Times concluded in a February 26, 1995 article, "[an] investigation has found that the FAA had for years brushed aside repeated warnings from pilots and experts, and from the behavior of the plane itself, that something was awry. The failure to heed those warnings raises troubling questions that go beyond the Roselawn crash, questions about the procedures and safeguards of the agency itself."

Additionally, the FAA responded slowly in the aftermath of the ATR-42 crash. Within a week of the crash, the National Transportation Safety Board recommended that the FAA ban all similar planes from flying in icy weather. Yet, the FAA waited an additional 4 weeks before concurring with the safety board.

On another front, the FAA has been unable to substantially modernize its air traffic control system. The number of equipment outages continue to rise while the agency struggles to identify a solution which will adequately address this problem in a timely manner. It is only through the dedication and hard work of the air traffic controllers and technicians that the system continues to operate without critical incidents.

Finally, the FAA continues to operate without a stable revenue stream. As Congress shrinks the available general revenue funds available to the agency and fails to fully spend monies collected in the Aviation Trust Fund, the agency faces a difficult future in maintaining a safe commercial airline industry. While Congress should assist in the funding of the FAA through general revenue appropriations, the agency must be able to obtain the funds necessary to maintain a highly technical workforce and modernize its systems.

Question. Can you discuss in further detail why your association supports the regulatory changes that our bill proposes?

Answer. We strongly support Section 104, a provision requiring the Federal Aviation Administration to respond to petitions and issue rules in a timely manner.

Often ten, even twenty years, will pass between the time the FAA identifies a safety hazard and new safety rules are issued. It is our belief that this slowness can be remedied through this provision of the legislation.

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POST HEARING QUESTIONS FOR THE RECORD, SENATE COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION, HEARING ON S. 1239, FAA REFORM, OCTOBER 12, 1995

SUBMITTED BY SENATOR LARRY PRESSLER

TO MS. CAROL HALLETT, PRESIDENT AND CEO, AIR TRANSPORT ASSOCIATION OF
AMERICA, WASHINGTON, DC 20004

1. What would you list as the potential benefits and negative consequences of a user fee-funded FAA?
2. Based on ATA's experiences dealing with the FAA in the past, are you concerned this bill gives too much power to the FAA Administrator?
3. A lack of accountability has been one of the key criticisms of FAA to-date.
 - a) What aspects of S. 1239 address accountability?
 - b) Are there changes you would suggest in this respect?
4. The FAA has the dual role of promoting the aviation industry and regulating it for the purpose of ensuring safety. It could be said that ATA has a similar mission, in that it must be concerned for the business and safety aspects of its members. Some have suggested that now is a good time to separate the two roles and let DOT promote the industry.
 - a) What is ATA's position?
 - b) If FAA is "running the industry's assembly line" via the Air Traffic Control system, then aren't improvements in ATC promoting the industry, therefore making it more difficult to separate the two roles?
5. The business jet community has claimed it imposes only "marginal" costs on the national air space system.
 - a) Do you agree—are the costs marginal?
 - b) Would you include reliever airports in the tally of associated marginal costs?
6. The FAA has projected an aggregate \$12 billion funding shortfall between now and FY 2002, under the current funding structure and budget caps.
 - a) What might be the effect of such a shortfall on industry operations?
 - b) What might be the resultant financial impact to the industry?
7. Some groups have recommended only implementing personnel and procurement reforms within FAA and taking a "wait and see" approach on budget and funding issues. If the FAA's budget projections are correct, what might be the effect on the industry in that period?
8. S. 1239 would allow user fees to replace the existing passenger and cargo waybill taxes. Taxes appear to be a relatively straight forward method of collecting funds, but getting the money into the system to satisfy FAA and industry needs has its flaws. Can you suggest a simple, fair user fee structure to replace air carrier taxes?
9. There is some concern the user fees will be "gamed" by the airlines to help establish competitive advantages.
 - a) Should fees be constructed to prevent that from happening and, if so, how?
 - b) If one or more airlines go out of business as a result of inadvertent competitive advantages in the user fees, does that undercut FAA's overall business base and income, eventually affecting the remaining carriers?
10. Air carriers have voiced their objections to the imposition of the jet fuel tax because of its adverse impact on a recovering industry. Estimates of annual costs per carrier range from \$50 to \$80 million.

a) Is the industry willing to accept a user fee structure which would be allowed to increase costs an average of 10 percent—possibly more in the case of low cost carriers—at this point in the recovery?

b) Are you expecting guarantees of a new jet fuel tax exemption in return for the potential increases contained in this bill?

Answers

[By Ms. Carol Hallett, Air Transport Association (ATA); Questions Asked by Senator Pressler]

1. ATA has not taken a position on the potential benefits or negative consequences of a user fee funded FAA.

2. We do not believe that S. 1239 gives too much power to the Administrator. There are adequate checks and balances both within the executive branch and among the several branches of government to overcome any problems which might arise.

3. The ATA Board has not addressed the details of S. 1239 in sufficient depth necessary to comment on the issue of accountability as contained in S. 1239 as ordered reported.

4. While some may view FAA's role as promoting the industry, we view its recent history as a regulatory agency.

5. We feel that the FAA's cost allocation studies have demonstrated that each sector of the aviation community imposes costs on the system, and that no sector can be accounted for as "marginal" costs.

6. We believe that the FAA's aggregate \$12 billion funding shortfall is not the result of a sound business plan; rather it is the result of government accounting. Until the actual needs and costs of running the system are audited, it would be premature to say that there is a real shortfall.

7. FAA's personnel and procurement reforms are now in effect. While some time needs to pass before the financial benefits can be evaluated, there also needs to be a top to bottom audit of the FAA's financial requirements.

8. ATA has not developed a position on the issue of user fees vs. excise taxes.

9. ATA has not addressed the issue concerning the "gaming" of user fees to obtain a competitive advantage among airlines.

10. In as much as ATA has not taken a position on the potential benefits or negative consequences of a user fee funded FAA, we are unable to answer this question.

QUESTIONS ASKED BY SENATOR PRESSLER AND ANSWERS THERETO BY HERBERT D. KELLEHER, SOUTHWEST AIRLINES

QUESTION 1. Based on your experiences dealing with the FAA in the past, are you concerned this bill gives too much power to the FAA Administrator?

Answer.

The FAA is a professional organization which delivers a very high quality of service in the area of air traffic control. The enviable aviation safety record in the U.S. is ample proof of that. Southwest's own experience over the last 25 years indicates that air traffic controllers perform their duties with an exemplary degree of skill and professional deportment.

Yet, I believe S. 1239 gives too much power to the FAA. It allows the FAA, in its sole discretion, to determine its own standards for operating the ATC system; what services it will provide; what its costs are; and what "price" it will charge for those services. The FAA is a pure monopoly and an "essential facility" in the practical sense and in the sense the term is used in antitrust law. As such, it could never respond appropriately, as in a free market, and would have no incentive to control costs or improve efficiency and productivity. In effect, S. 1239 makes the FAA a public utility with the power to establish and approve its own rates. Users have no right or opportunity to reject the utilities' services or its rates unless they are willing to go out of business.

QUESTION 2. The FAA has projected an aggregate \$12 billion funding shortfall between now and FY 2002, under the current funding structure and budget caps.

(a) What might be the effect of such a shortfall on air carrier operations?

(b) What might be the resultant financial impact on the industry?

Answer.

(a) We do not know. Little is known and less is understood by the private sector about the FAA's budget. In the private sector, if expenses were forecast to exceed revenues by this order of magnitude, it would be highly unlikely for the response to be: "Let's raise prices." The point is that before sounding the alarm for higher

prices ("user fees"), the FAA should be given the opportunity to produce the benefits made possible by personnel and procurement reform, the trust fund surplus should be made available, and the FAA should be able to leverage the existing and abundant revenue stream for its long term capital spending.

(b) The financial impact is speculative. In the worst case scenario, (budget constraints force a curtailment of air carrier operations), carriers would be forced to react. One logical response would be to liquidate assets and furlough employees to avoid a financial impact. Another response might be to alter routes (convert short haul to long haul) and operate with larger aircraft (fewer flights but more passengers). The losers here would more likely be consumers who would have reduced service options and higher fares. Smaller markets would almost certainly lose service. Competition would diminish.

QUESTION 3. Some groups have recommended implementing only personnel and procurement reforms within the FAA and taking a "wait and see" approach on budget and funding issues. If FAA's budget projections are correct, what might be the effect on the industry in that period?

Answer.

As I understand the FY '96 DOT appropriations bill and Secretary Peña's testimony before the House Transportation and Infrastructure Committee on October 11, 1995, there is no shortfall for FY '96. Presumably, the benefits of reform coupled with continued adjustments by Congress with respect to the funding of the FAA over the next few years could teach us a lot before a wholly new tax or user fee system is imposed upon aviation users. If the FAA's numbers are right and public policy as enunciated by the Congress does not address the problem, then the industry would be forced to respond as indicated in 2(b) above. In short, tax policy strongly influences business behavior. If business is subject to higher taxes in the form of "user fees," behavior will adjust accordingly, e.g., fewer flights; less service; higher fares; and reduced payrolls.

QUESTION 4. S. 1239 allows user fees to replace the existing passenger and cargo waybill taxes. Taxes appear to be a relatively straightforward method of collecting funds, but getting the money into the system to satisfy FAA and industry needs has its flaws. Can you suggest a simple, fair user fee structure to replace air carrier taxes?

Answer.

Yes. A system identical to what we have now, whereby each passenger pays a simple arithmetic percentage of his/her fare as a fee for coverage of the ATC system. We are not aware of any constraints on Congressional constitutional authority to create such a fee mechanism (should it be deemed necessary) with the fee proceeds going directly for operation of the FAA.

QUESTION 5. There is some concern that the user fees will be "gamed" by the airlines to help establish competitive advantages.

(a) Should fees be constructed to prevent that from happening, and, if so, how?

(b) If one or more airlines go out of business as a result of inadvertent competitive advantages in the user fees, does that undercut the FAA's overall business base and income, eventually affecting the remaining carriers?

Answer.

(a) Yes, as outlined in No. 4 above. History has shown the current system of collecting revenue to be simple, fair, free of fraud, efficient, and easy to administer. Costs of collection are low. Receipts are substantial. Why change?

(b) Of course. Again, the FAA is a natural, pure monopoly. Given the unilateral right to raise revenue at will, it will do so. Business behavior will adjust of necessity. As air carrier operating expenses rise to pay for the FAA, steps will be taken to reduce that liability by cutting service, using different aircraft, laying off Employees, and/or raising fares. For shorthaul carriers like Southwest, that means returning people to their automobiles—a fact which will generate new and different transportation and social costs. In a highly "elastic" business such as ours, consumer demand declines as prices go up. The FAA's forecasts will be substantially overstated, as they have been historically even under the present system.

[NOTE: At the time of printing, May 13, 1996, no response to the following questions had been received.]

POST HEARING QUESTIONS FOR THE RECORD, SENATE COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION, HEARING ON S. 1239, FAA REFORM, OCTOBER 12, 1995

SUBMITTED BY SENATOR LARRY PRESSLER

TO MR. FREDERICK W. SMITH, CHAIRMAN AND CEO, FEDERAL EXPRESS CORPORATION,
2005 CORPORATE AVENUE, MEMPHIS, TENNESSEE 38132

1. Based on your experiences dealing with the FAA in the past, are you concerned this bill gives too much power to the FAA Administrator?
2. The FAA has projected an aggregate \$12 billion funding shortfall between now and FY 2002, under the current funding structure and budget caps.
 - a) What might be the effect of such a shortfall on air carrier operations?
 - b) What might be the resultant financial impact to the industry?
3. Some groups have recommended implementing only personnel and procurement reforms within FAA and taking a "wait and see" approach on budget and funding issues. If FAA's budget projections are correct, what might be the effect on the industry in that period?
4. S. 1239 allows user fees to replace the existing passenger and cargo waybill taxes. Taxes appear to be a relatively straight forward method of collecting funds, but getting the money into the system to satisfy FAA and industry needs has its flaws. Can you suggest a simple, fair user fee structure to replace air carrier taxes?
5. There is some concern that the user fees will be "gamed" by the airlines to help establish competitive advantages.
 - a) Should fees be constructed to prevent that from happening and, if so, how?
 - b) If one or more airlines go out of business as a result of inadvertent competitive advantages in the user fees, does that undercut the FAA's overall business base and income, eventually affecting the remaining carriers?
6. In your prepared statement you basically say you are willing to swap taxes for user fees, but effectively not pay any more than you do currently.
 - a) If you had further insight into FAA's costs and allocations which substantiated the projected funding shortfall, how would you propose making up the difference?
7. Air carriers have voiced their objections to the imposition of the jet fuel tax because of its adverse impact on a recovering industry. Estimates of annual costs per carrier range from \$50 to \$80 million.
 - a) Is the industry willing to accept a user fee structure which would be allowed to increase costs an average of 10 percent—possibly more in the case of low cost carriers—at this point in the recovery?
 - b) Are you expecting guarantees of a new jet fuel tax exemption in return for the potential increases contained in this bill?
8. What do you anticipate the impact would be on your foreign operations if countries abroad which presently do not levy overflight and ATC system user fees on your foreign flights decided to do so based on the precedent S. 1239 would establish?

[NOTE: At the time of printing, May 13, 1996, no response to the following questions had been received.]

POST HEARING QUESTIONS FOR THE RECORD, SENATE COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION, HEARING ON S. 1239, FAA REFORM, OCTOBER 12, 1995

SUBMITTED BY SENATOR JOHN MCCAIN

TO MR. WILLIAM FRANK, CHAIRMAN AND CEO, AMERICA WEST AIRLINES 4000 EAST
SKYHARBOR BLVD., PHOENIX, ARIZONA 85034

1. Recently, we have all listened to so much discussion about funding reform. I appreciate your comments that the carriers, and America West in specific, are willing to pay the cost of the service they receive. Through our legislation, that is all we are asking system users to do.
 - a) Frankly, however, I cannot understand your statement that you are skeptical about the impending FAA budget shortfall. Certainly, you noticed in the recent DOT appropriations debate on possible PFC increases that Congress believes the FAA is facing a funding shortfall. If you would, please elaborate on your reasons for this skepticism.

2. It does not seem to me that when you considered, and criticized, the funding provisions of our bill, you took into account the safeguards that protect against considerable increases in fees for any industry segment.

a) Isn't it significant that there is industry involvement in setting up the new fee systems through the Management Advisory Council? Isn't it also critical that Congress can disapprove any new fee system or request to increase fees?

3. One key element of FAA reform has been overshadowed by personnel, procurement, and financing issues, and that is regulatory reform. As you may know, S. 1239 specifically requires the FAA to act on all petitions for rulemaking within 6 months after the date such petitions are filed, and take final action on all notices of proposed rulemakings within 18 months after introduction. Under S. 1239, the DOT Secretary must approve the issuance of any proposed or final regulation having a cumulative impact of \$50 million or more annually.

a) What is your assessment of these provisions, and how will they contribute to meaningful FAA reform?

4. How is the ATC system inefficient? How much of the inefficiencies are attributable to FAA's management of the system and how much to other factors?

5. What changes would you make to the current ATC system? How would these changes make the system more efficient? Would FAA need to be restructured in order to accomplish such changes?

6. Are you supportive of the fees under Section 303 related to certification, security, etc. . . and under Section 304 related to ATC services? If not, what fees would you support?

7. Do you believe that the FAA should continue to receive general fund support or are you in favor of the agency being funded entirely by its users, including government users?

8. There is a widespread belief the general aviation community does not pay its fair share in user taxes compared to services it is provided, particularly with respect to business jets.

a) Do you believe this to be true? And, what support do you have for your position?

b) Assuming the FAA does need more money in the future to provide its current level of services, should the general aviation community pay more?

9. What is your response to the suggestion the current excise taxes should be raised as a funding solution if the FAA will indeed face shortfalls in the future?

10. I understand many air carriers believe the European user fee systems are flawed. Do you believe air carrier participation in the creation of user fees, as provided for in S. 1239, would prevent the negative aspects of foreign fee systems from arising in a U.S. system?

11. What are the potential benefits to air carriers if the FAA is operated in a more business-like manner with direct aviation community input?

12. What specific changes can you offer to improve this bill?

13. I understand that air carriers are generally opposed to paying any more money through any form of tax or fee. But wouldn't your company be willing to spend a little more in the short-term to save itself from the rising long-term costs that an underfunded and inefficient FAA would effectively impose on your company in the future?

14. What might happen to air carriers if the FAA doesn't get sufficient resources in future years?

POST HEARING QUESTIONS FOR THE RECORD, SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION, HEARING ON S. 1239, FAA REFORM, OCTOBER 12, 1996

SUBMITTED BY SENATOR MCCAIN

TO MS. CAROL HALLETT, PRESIDENT AND CEO, AIR TRANSPORT ASSOCIATION OF AMERICA, WASHINGTON, DC 20004

1. There is a widespread belief the general aviation community does not pay its fair share in user taxes compared to services it is provided, particularly with respect to business jets.

a) Do you believe this to be true? And, what support do you have for your position?

b) Assuming the FAA does need more money in the future to provide its current level of services, should the general aviation community pay more?

2. What is your response to the suggestion the current excise taxes should be raised as a funding solution if the FAA will indeed face shortfalls in the future?

3. I understand many air carriers believe the European user fee systems are flawed. Do you believe air carrier participation in the creation of user fees, as provided for in S. 1239, would prevent the negative aspects of foreign fee systems from arising in a U.S. system?

4. What are the potential benefits to air carriers if the FAA is operated in a more business-like manner with direct aviation community input?

5. What specific changes can you offer to improve this bill?

6. I understand that air carriers are generally opposed to paying any more money through any form of tax or fee. But wouldn't your company be willing to spend a little more in the short-term to save itself from the rising long-term costs that an underfunded and inefficient FAA would effectively impose on your company in the future?

7. What might happen to air carriers if the FAA doesn't get sufficient resources in future years?

8. I have heard that ATA's current position on FAA funding is that the existing excise taxes should be proportionately increased as the preferred means of meeting any budget shortfalls rather than the implementation of a user fee system. Is this true?

9. I understand that ATA has been attempting to devise its own legislation or plan to reform the FAA. Does the ATA now have a comprehensive proposal on FAA reform that is supported by all your constituent members? If not, what is the status of your efforts in this regard?

10. Does your association believe the FAA is facing a funding shortfall or crisis in the next few years?

11. If new aviation user fees went directly to meet growing aviation needs, as proposed in S. 1239, and lead to greater air traffic flow management efficiencies, thereby saving carriers money, then wouldn't the user fees be of real value to all carriers?

12. Does the ATA support a fully independent FAA? Please explain your association's position.

13. I understand that ATA supports taking the Trust Fund off-budget. Do you believe that simply taking the Trust Fund off-budget will guarantee that funds contributed by users will be used only for FAA programs and services since the current revenue stream would remain within the Federal budget process? Please explain how taking the Trust Fund off-budget will guarantee aviation revenues for aviation purposes?

14. As you know, there exists a broad consensus among the Administration, Congress, and the aviation community on the immediate need for FAA personnel and procurement reform. However, with respect to the critical issue of financing reform, there are differences of opinion as to who should pay and why.

a) Do you concur that the FAA will face a funding shortfall as Congress works to eliminate the federal budget deficit? What type of FAA funding system would the ATA prefer?

15. I understand, that you concur with Herb Kelleher's recent statement that if enacted, the new user system proposed in our bill could increase costs on commercial carriers by as much as \$2 billion annually.

a) Is it true that you agree with that estimate? If so, can you explain how it was determined?

b) Are you familiar with the provision in Section 304 of our bill that would ensure that the total amount of new ATC fees imposed in any one year could not exceed 110 percent of the projected difference between what would have been collected under FY 95 tax rates and what is estimated to be collected under the reduced trust fund tax rates? If so, how can you contend that the airlines' cost will increase more than twice the amount projected by the CBO (\$600-900 million)?

16. In your testimony before the House Aviation Subcommittee, you expressed the concern that the House's solution to governance problems of the FAA, specifically the role of the proposed Federal Aviation Board and the composition of the Management Advisory Committee, was inadequate. As you know, S. 1239 significantly broadens the responsibilities of the FAA Administrator and establishes a Federal Aviation Management Advisory Council, consisting of 13 private sector appointees, which would provide oversight on management, policy, spending and regulatory matters.

a) Do you believe these specific governance reforms in our bill are more adequate, and address your concerns?

b) Is this provision in our bill that creates the Management Advisory Council, thereby creating a voice for the carriers in FAA matters, important to your membership? Doesn't this provision, which significantly enhances the role of carriers with respect to FAA matters, put the carriers in a better position than the situation they are in today?

17. How is the ATC system inefficient? How much of the inefficiencies are attributable to FAA's management of the system and how much to other factors?

18. What changes would you make to the current ATC system? How would these changes make the system more efficient? Would FAA need to be restructured in order to accomplish such changes?

19. Are you supportive of the fees under Section 303 related to certification, security, etc. . . and under Section 304 related to ATC services? If not, what fees would you support?

20. Do you believe that the FAA should continue to receive general fund support or are you in favor of the agency being funded entirely by its users, including government users?

Answers

[By Ms. Carol Hallett, Air Transport Association (ATA); Questions Asked by Senator McCain]

1. The FAA's cost allocation studies have demonstrated that the commercial aviation sector pays far more than the fully allocated costs of its demands on the system. Whatever financing system is developed to pay for the costs of running the FAA, commercial aviation should not be called upon to pay any more than the costs which is imposes.

2. Until there is an accurate audit of the FAA's future financial needs, and ATA does not believe that the purported \$12 shortfall is based on a sound business plan, (rather it is based upon government accounting and budgeting), ATA is unable to comment on financing any shortfalls.

3. ATA has not taken a position on the establishment of air traffic control user fees in the United States. ATA has objected to the formula used by Eurocontrol to assess air traffic control charges.

4. If FAA were operated in a more business-like manner, we believe that it would prioritize the services which it offers to meet customer needs.

5. ATA has no suggestions at this time for further modifications to S. 1239.

6. Since this question relates to the cost benefit which any individual company derives from changes in the air traffic control system cost structure, we are unable to respond to it.

7. If the FAA is insufficiently funded, which means that it does not efficiently use the funds which it has available to provide the services which are needed by the users, than there would be capacity constraints imposed on the aviation system.

8. ATA has not taken a position on the issues of excise taxes vs. user fees.

9. ATA does not have a position to offer the committee in its further consideration of S. 1239.

10. ATA believes that there needs to be a thorough audit of the FAA's financial plan before it can determine whether there is a potential funding shortfall.

11. ATA has not taken a position on the issue of excise taxes vs. user fees, and therefore were are unable to respond to this question.

12. ATA has not taken a position concerning the debate between an independent FAA vs. the autonomous FAA proposed in S. 1239.

13. ATA supports taking trust funds off-budget. Concurrently, there needs to be an audit of FAA's financial plans to determine what additional amounts of funding are necessary in order to make the FAA function most effectively.

14. Again, until there is an audit of FAA's financing plan and the establishment of a business plan, we are unable to determine the extent of FAA's funding shortfall or recommend solutions for accommodating any shortfall which may exist.

15. ATA is unable to respond to this question until an audit of FAA's financing plan is completed.

16. ATA feels that carriers should have a significant voice in the operation of the FAA. Too many of the FAA's problems can be attributed to the non-businesslike manner in which the FAA has operated.

17. The ATC system is inefficient in that its throughput is inadequate to meet demand, thereby resulting in delays.

18. There are literally dozens of technical and operational changes which should be made to the ATC system. ATA regularly comments to the Appropriations Committees and the FAA suggesting priorities for system architecture and operation.

19. ATA has not taken a position concerning the relative merits of user fees vs. excise taxes.

20. ATA believes that there are FAA expenses which are not driven by commercial aviation, and that those costs should be borne by those who drive them. To the ex-

tent the Congress does not want to charge those who drive such costs, we feel strongly that the Congress should appropriate finds to cover such costs.

QUESTIONS ASKED BY SENATOR MCCAIN AND ANSWERS THERETO BY HERBERT D. KELLEHER, SOUTHWEST AIRLINES

QUESTION 1. As you know, any proposed method of FAA financing provides one set of incentives for both users and providers of ATC services.

(a) In your opinion, would a system of user fees, based on the fully allocated cost of providing those services, give users a greater understanding of the cost of that service than today's single aggregate trust fund mechanism?

(b) How can you object to a proposed fee system, as contemplated by our bill, that is based on the costs of the services provided and is allocated fairly among system users in accordance with their actual use of such services?

(c) By understanding the cost of each service, wouldn't the system users, particularly those represented on our bills proposed Management Advisory Council, be more likely to suggest and support alternative, a more efficient means of providing that service?

(d) By establishing the Management Advisory Council and by providing a voice for system users via that council on fees and other critical FAA matters, aren't the system users, and particularly carriers, better off than under the current system, which doesn't provide any formal opportunity for user input?

Answer.

Questions 1(a-d) are difficult to answer in their current form because they proceed from a faulty economic premise. The FAA is the purest form of natural monopoly. It is an "essential facility" in the literal practical sense, as well as in the sense the term is used in antitrust law. A natural, pure monopoly can never be expected (or trained) to respond to "incentives" as questions 1 a-d implicitly assert. The fee system contemplated by S. 1239 offers no incentives whatsoever, as that term is used in the private sector, to enhance efficiency and productivity and reduce costs. In fact, there is a disincentive, as rate increases to cover inefficiency and higher costs are obtained easily, and users (i.e., taxpayers) have no recourse. Under S. 1239, the FAA is a public utility, which can mandate the use of its services as a sole source provider and then proceed to set its own rates for those services.

We do not see any connection between the user fee structure and our ability to "understand" how the FAA operates. Presumably, Congress and interested parties are capable of understanding how other federal agencies operate without citizens paying for those agencies' activities directly on a fee basis. That is, there is no cause/effect relationship between the extraction of a fee on an involuntary basis and one's "understanding" of how the fee was arrived at.

Finally, we have never perceived a problem in voicing our concerns to the FAA professionals who man the world's safest ATC system. They listen to us. We listen to them. For 25 successful years, it's worked quite well for us.

QUESTION 2. I understand that you prefer the current excise tax system of FAA funding. However, if the ticket tax were changed in the future from a percentage of the ticket price to a flat rate, wouldn't you see our proposed system in a different light?

Answer.

No. We would see your proposed system in exactly the same light as a "flat rate." Both would be highly regressive taxes imposing higher taxes on those with the least ability to afford them. It is also interesting to note that at the FAA "Challenger 2000" conference in Washington, DC on November 1, 1995, Administrator Hinson, in his speech to those assembled, stated that the *10% passenger tax raises more than enough money to pay for everything the FAA needs.*

QUESTION 3. Over the years, the aviation community has criticized the overall "culture" of the FAA, specifically its resistance to change. Given the similar personnel, procurement, and regulatory reform language contained in the McCain-Ford-Hollings and Duncan-Lightfoot bills, do you believe that one proposal will clearly result in a more efficient, responsive FAA?

Answer.

Southwest is not a "culture" critic. For 25 years we have received excellent ATC services from the FAA. The FAA itself wants personnel/procurement reform. We defer to government professionals' own assessment of the precise form of personnel/procurement reform required by the FAA. Based on a series of GAO reports, the FAA's problems are more closely related to a series of complex technical and computer software problems on which a "cultural" transformation will have little im-

pact. We in the private sector in this Information Age suffer daily from the same problem.

QUESTION 4. How is the ATC system inefficient? How much of the inefficiencies are attributable to FAA's management of the system and how much to other factors?

Answer.

We do not know.

QUESTION 5. What changes would you make to the current ATC system? How would these changes make the system more efficient? Would FAA need to be re-structured in order to accomplish such changes?

Answer.

See answer to No. 4.

QUESTION 6. Are you supportive of the fees under Section 303 related to certification, security, etc. . . and under Section 304 related to ATC services? If not, what fees would you support?

Answer.

No, Southwest supports the position of the ATA Board of Directors in opposing such fees, before such position was diluted by the various airline lobbyists who met with Senate staff subsequent to the adoption of such position by the ATA board. ATA's written position, previously submitted to the Committee, is consistent with longstanding ATA board policy. A copy is attached (see page 78).

QUESTION 7. Do you believe that the FAA should continue to receive general fund support, or are you in favor of the agency being funded entirely by its users, including government users?

Answer.

As long as the operation of the system confers benefits upon the general public, we see no reason why the public should not contribute to the system. There are millions of beneficiaries of the enormous bounty our aviation industry produces who may not be direct "users." Since the commercial air carrier industry already pays more than its fully allocated costs for FAA services, a general fund contribution cannot be construed as a subsidy.

QUESTION 8. There is a widespread belief that the general aviation community does not pay its fair share in user taxes compared to the services it is provided, particularly with respect to business jets.

(a) Do you believe this to be true? And, what support do you have for your position?

(b) Assuming the FAA does need more money in the future to provide its current level of services, should the aviation community pay more?

Answer.

We are not sufficiently aware of general aviation's use, taxes, or costs to answer the question. Taxing air carriers, which already pay more than their fair share of FAA costs, if FAA needs more money, would seem like a punitive step.

QUESTION 9. What is your response to the suggestion the current excise taxes should be raised as a funding solution if the FAA will indeed face shortfalls in the future?

Answer.

It would be preferable to the user fees contemplated by S. 1239, in the event the FAA truly needed the money.

QUESTION 10. I understand many air carriers believe the European user fee systems are flawed. Do you believe air carrier participation in the creation of user fees, as provided for in S. 1239, would prevent the negative aspects of foreign fee systems from arising in a U. S. system?

Answer.

Southwest has no experience with such fees.

QUESTION 11. What are the potential benefits to air carriers if the FAA is operated in a more business-like manner with direct aviation community input?

Answer.

The question is too speculative and vague to answer.

QUESTION 12. What specific changes do you offer to improve this bill?

Answer.

We have not seen the bill as it was approved with amendments following the committee hearing on November 9, 1995. Some of the many last-minute changes may have addressed some of our concerns. After reviewing the revised bill, we will further supplement our response, if necessary. As a general proposition, Southwest prefers the approach offered by H.R. 2276, which preserves the competitive balance in the industry.

With respect to S. 1239, however, the Congress should mandate, expressly and specifically, that the method of raising revenue for operation of the FAA, regardless of whether it is labeled a tax or a fee, should remain as it is today: a percentage

of the passenger fare paid for commercial carriers and a fuel assessment for general aviation.

With respect to true financial reform, as the National Airline Commission recommended, the FAA should be permitted to leverage its funds to facilitate long term capital spending in a financially prudent manner.

With respect to governance, Southwest agrees with America West that the members of the Management Advisory Committee, ("MAC ") should not be appointed by the Administrator; that airlines (which are responsible for a majority of the revenues) receive a majority of seats on the MAC; and, that smaller carriers are guaranteed adequate representation on the MAC.

The "Section 303" fees should be deleted. Those public services should be financed by the general fund.

QUESTION 13. I understand that air carriers are generally opposed to paying any more money through any form of tax or fee. But wouldn't your company be willing to spend a little more in the short-term to save itself from the rising long-term costs that an underfunded and inefficient FAA would effectively impose on your company in the future?

Answer.

We cannot assume, as the question does, that spending "a little more in the short-term" would solve any of the problems presumed to occur. We doubt that the increase in our costs would be "little" or persist merely for the "short-term."

QUESTION 14. What might happen to air carriers if the FAA doesn't get sufficient resources in future years?

Answer.

There is no way we can answer such a speculative question in a factual manner.

QUESTION 15. Why won't the implementation of a user fee system help facilitate the creation of a more business-like FAA?

Answer.

See answer to No. 1 above.

QUESTION 16. If you believe funding reform for the FAA is necessary, exactly what would you propose that does not violate budgetary spending caps? In other words, what specific, realistic alternative to user fees do you propose?

Answer.

Southwest is not sufficiently familiar with the federal budget process and the laws, rules, and regulations pertaining thereto to answer the question. As we have stated repeatedly and consistently, the method of raising revenues used today is adequate, effective, fair, simple, and easy to administer. If Congress feels it is necessary to convert to a "user fee" system, Congress is empowered under the U. S. Constitution to set the basis for the collection of such a fee, e.g. a percentage of the passenger fare paid by commercial airline passengers.

QUESTION 17. What do ATC delays cost your airline annually?

Answer.

We do not know. "Cost Accounting" techniques are not nearly so precise.

(a) If a new system of ATC user fees, created with the participation of air carriers, was able to reduce the costs to your airline by reducing efficiencies, then wouldn't the system be of great value to your airline, which needs rapid turnaround of aircraft and few delays?

Answer.

Yes if the value in terms of reduced inefficiencies exceed the costs of the fees, an assumption we are in no position to make. There is no direct correlation between higher fees and efficiency. Besides, if the question is whether the FAA needs more money to operate, the present system of assessing passengers based on the fare paid is a prodigious revenue generator. Again, as Administrator Hinson acknowledged in a public speech as recently as November 1, 1995, the formula presently based on 10% of passenger fare raises more than enough money to operate the FAA.

In other words, if Congress believes the FAA needs new and better ways to manage its resources—fix it. If Congress believes money should flow directly to the FAA from users, bypassing the trust fund and/or the budget/appropriations processes—do it. What is *NOT* broken is the precise means of raising the revenue. The mechanical system we use today (i.e., a percentage of the passengers' fare) is simple, fair, easy to implement, efficient, progressive, and, most importantly, raises the sums needed.

STATEMENT OF THE ATA BOARD OF DIRECTORS

The ATA Board of Directors believes that bills introduced by Senators McCain and Ford, and by Representatives Duncan and Lightfoot, both make significant contributions toward FAA reform, especially with respect to the overhaul of the agen-

cy's personnel and procurement policies. In addition, both bills recognize that ensuring secure long-term financing for the FAA is central to the reform issue, and that gaining control of the revenue stream is absolutely critical to successfully reforming the agency. To that end, the Board would like to see additional protections to reserve exclusively for aviation purposes, all revenues collected after enactment, and to guarantee that such revenues will be expended on a schedule dictated by the needs of the national aviation system as opposed to the dictates of fiscal policy.

Because the commercial aviation industry currently pays more than 100% of its fully allocated cost for use of the national airspace system, the Board is opposed to any increase in the level of charges imposed on commercial users. However, the Board does not oppose efforts to increase system funding through recovery of costs imposed on the system by non-commercial users. Finally, the Board believes it is imperative that reform of the FAA include an approach to governance that ensures a meaningful voice for aviation users in the operation and management of the system.

In summary, the ATA Board of Directors express its appreciation to Senators McCain and Ford and to Representatives Duncan and Lightfoot for their work in moving the reform effort ahead, and looks forward to working with them in the coming days to enact legislation that will ensure that meaningful, positive reform of the FAA becomes a reality.

[NOTE: At the time of printing, May 13, 1996, no response to the following questions had been received.]

POST HEARING QUESTIONS FOR THE RECORD, SENATE COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION, HEARING ON S. 1239, FAA REFORM, OCTOBER 12, 1995

SUBMITTED BY SENATOR JOHN MCCAIN

TO MR. FREDERICK W. SMITH, CHAIRMAN AND CEO, FEDERAL EXPRESS CORPORATION,
2005 CORPORATE AVENUE, MEMPHIS, TENNESSEE 38132

1. There is a widespread belief the general aviation community does not pay its fair share in user taxes compared to services it is provided, particularly with respect to business jets.

a) Do you believe this to be true? And, what support do you have for your position?

b) Assuming the FAA does need more money in the future to provide its current level of services, should the general aviation community pay more?

2. What is your response to the suggestion the current excise taxes should be raised as a funding solution if the FAA will indeed face shortfalls in the future?

3. I understand many air carriers believe the European user fee systems are flawed. Do you believe air carrier

participation in the creation of user fees, as provided for in S. 1239, would prevent the negative aspects of foreign fee systems from arising in a U.S. system?

4. What are the potential benefits to air carriers if the FAA is operated in a more business-like manner with direct aviation community input?

5. What specific changes can you offer to improve this bill?

6. I understand that air carriers are generally opposed to paying any more money through any form of tax or fee. But wouldn't your company be willing to spend a little more in the short-term to save itself from the rising long-term costs that an underfunded and inefficient FAA would effectively impose on your company in the future?

7. What might happen to air carriers if the FAA doesn't get sufficient resources in future years?

8. How is the ATC system inefficient? How much of the inefficiencies are attributable to FAA's management of the system and how much to other factors?

9. What changes would you make to the current ATC system? How would these changes make the system more efficient? Would FAA need to be restructured in order to accomplish such changes?

10. Are you supportive of the fees under Section 303 related to certification, security, etc. . . and under Section 304 related to ATC services? If not, what fees would you support?

11. Do you believe that the FAA should continue to receive general fund support or are you in favor of the agency being funded entirely by its users, including government users?



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W. A. FRANKE
Chairman of the Board
and
Chief Executive Officer

November 27, 1995

The Honorable Larry Pressler
Chairman, Committee on Commerce,
Science and Transportation
United States Senate
Washington, D. C. 20510-6125

Dear Senator Pressler:

Thank you for the opportunity to respond to additional questions regarding FAA/ATC reform. My responses to the questions you asked as a follow-up to the hearing of October 12, 1995 on S. 1239, FAA Reform follow:

1. Based on your experiences dealing with the FAA in the past, are you concerned this bill gives too much power to the FAA Administrator?

Answer: Yes, I am. This concern is why I proposed that the Management Advisory Council section of the bill be amended to provide that oversight is imposed on the Administrator and that smaller national commercial carriers are represented on the Council.

2. The FAA has projected an aggregate \$12 billion funding shortfall between now and FY 2002, under the current funding structure and budget caps.

- a. What might be the effect of such a shortfall on air carrier operations?
- b. What might be the resultant financial impact to the industry?

Answer: This is a difficult question to answer. If the question is, will America West be negatively affected by a financial shortfall that would curtail operations, the answer is "yes". However, it is entirely possible that critical FAA operations could be maintained at lower funding levels if reductions or efficiencies were obtained elsewhere within the FAA. We would like this issue examined, and thus, we proposed an independent study to determine the validity of FAA's estimated expenditure requirements.

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3. Some groups have recommended implementing only personnel and procurement reforms within FAA and taking a "wait and see" approach on budget and funding issues. If FAA's budget projections are correct, what might be the effect on the industry in that period?

Answer: As noted, we have difficulty in assuming the FAA budget projections are correct. It is important we obtain an independent analysis of FAA's budget requirements and an analysis of the impact of bringing expenses in line with available revenues. Only then can we intelligently evaluate the effects on the industry.

However, if after this analysis is complete and there is an agreement that a shortfall exists which can not be eliminated by a prioritization process which deletes low priority activities, there would be significant capacity shortages, system outages or, alternatively, increased costs for passengers and the tax payer in order to deal with the shortfall.

4. S. 1239 allows user fees to replace the existing passenger and cargo waybill taxes. Taxes appear to be a relatively straight forward method of collecting funds, but getting the money into the system to satisfy FAA and industry needs has its flaws. Can you suggest a simple, fair user fee structure to replace air carrier taxes?

Answer: It is our view that Congress has the authority to define the basis or standards for any users fee system. We recommend that Congress declare gross airline revenues as the basis for the user fee systems. Any other basis for a new user fee system will disrupt the current competitive balance among the commercial carriers. I do not believe Congress should approve a study which would alter the competitive balance which exists today in the industry.

5. There is some concern that the user fees will be "gamed" by the airlines to help establish competitive advantages.
 - a. Should fees be constructed to prevent that from happening and, if so, how?
 - b. If one or more airlines go out of business as a result of inadvertent competitive advantages in the user fees, does that undercut the FAA's overall business base and income, eventually affecting the remaining carriers?

Answer: As noted in Answer to Question 4, this is a valid concern. The current competitive balance has grown up around the (excise) ticket tax. Changing that feature has the potential to disrupt the industry. Any disruption in the industry could affect service patterns.

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6. Regional air carriers are extremely important to states represented by many Senators on this subcommittee. I am concerned that budgetary constraints within the FAA will adversely affect service to states such as South Dakota. I am also concerned about fees eventually being cited as another cost factor to rationalize cuts in service.
- a. What impact do you anticipate proposed user fees would have on your affiliated regional carriers?
 - b. What assurances would states like mine have with respect to air service under the new funding structure?

Answer: I could only speculate on the impact of user fees on regional airlines. However, as I have stated before, a change in the status quo certainly has the potential to disrupt all segments of the industry. Any increased costs on low cost or regional carriers will negatively impact smaller markets.

Thank you again for the opportunity to testify regarding S. 1239 and for the chance to provide further clarification through these questions.

Yours very truly,



W. A. Franke

WAF/kk

DELTA AIR LINES, INC.
HARTSFIELD ATLANTA INTERNATIONAL AIRPORT
ATLANTA, GEORGIA 30320

REX A. MCCLELLAND
SENIOR VICE PRESIDENT
CORPORATE SERVICES

November 28, 1995

The Honorable Larry Pressler
Chairman
Committee on Commerce, Science and Transportation
United States Senate
Washington, DC 20510

Dear Chairman Pressler:

Thank you for the opportunity to provide you and the Committee with Delta Air Lines' views on FAA reform.

Attached for your consideration are responses to the questions submitted to Delta. Please do not hesitate to contact me if you have any questions or would like additional information on these or any issues of interest to you.

Again, we appreciate your interest in Delta's views. We look forward to working closely with you and your staff as the Committee considers these important issues.

Cordially,



POST HEARING QUESTIONS FOR THE RECORD
 SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
 HEARING ON S. 1239, FAA REFORM
 OCTOBER 12, 1995

SUBMITTED BY SENATOR LARRY PRESSLER
 TO MR. REX MCCLELLAND, SENIOR VICE PRESIDENT CORPORATE SERVICES
 DELTA AIR LINES, INC., HARTSFIELD INTERNATIONAL AIRPORT, ATLANTA,
 GEORGIA 30320

Based on your experiences dealing with the FAA in the past, are you concerned this bill gives too much power to the FAA Administrator?

No, we believe that the legislation is crafted to ensure that appropriate checks and balances are in place. For example, the bill requires establishment of a Management Advisory Council to review and advise FAA on management, policy, spending, user fees and regulatory matters. It also provides appropriate oversight and review by Congress on important issues.

The FAA has projected an aggregate \$12 billion funding shortfall between now and FY 2002, under the current funding structure and budget caps.

- a) What might be the effect of such a shortfall on air carrier operations?
- b) What might be the resultant financial impact to the industry?

First of all, Congress should not immediately accept the FAA projections. The legislation correctly requires an independent study to verify the needs of the FAA for operations and airport capital needs. Once the appropriate needs are verified by an independent analysis, the legislation creates a process where the funding needs can be met and control of the revenue stream sustained.

Delta incurs over \$250 million in additional annual operating costs because of the inability of the air traffic control system to efficiently accommodate our operations. If we fail to achieve reform now, the delays and costs attributable to inefficiencies will worsen and the costs to Delta will rise dramatically.

Some groups have recommended implementing only personnel and procurement reforms within FAA and taking a "wait and see" approach on budget and funding issues. If FAA's budget projections are correct, what might be the effect on the industry in that period?

Delta strongly opposes separating personnel and procurement from funding issues. In our view, the most critical objective for FAA reform is a guarantee that funds

contributed by the users of FAA programs are available for their intended purpose and that all users pay their fair share of the agency's costs for services. The McCain-Ford bill appropriately addresses the three components of comprehensive reform: control of the revenue stream, personnel reform and procurement reform.

4. S. 1239 allows user fees to replace the existing passenger and cargo waybill taxes. Taxes appear to be a relatively straight forward method of collecting funds, but getting the money into the system to satisfy FAA and industry needs has its flaws. Can you suggest a simple, fair user fee structure to replace air carrier taxes?

We support the McCain-Ford approach which evaluates the needs of the FAA, studies funding options and subsequently considers user fees. Excise taxes affect the price elasticity of demand and we are open-minded to user fees as a more effective and equitable funding mechanism. In addition, under the current budget rules, moving to user fees appears to be the only way to move FAA funding outside the budget process. A user fee system would more closely match revenue to actual costs, thereby reducing pressure to increase revenue from airline users.

5. There is some concern that the user fees will be "gamed" by the airlines to help establish competitive advantages.
 - a) Should fees be constructed to prevent that from happening and, if so, how?
 - b) If one or more airlines go out of business as a result of inadvertent competitive advantages in the user fees, does that undercut the FAA's overall business base and income, eventually affecting the remaining carriers?

We believe that the McCain-Ford bill has incorporated adequate safeguards to prevent the situation described above. In addition to the studies prescribed in the bill, specific considerations in the development of ATC fees are outlined, including: impact on air fares, promotion of fair and competitive practices, and the impact on small communities and regional carriers. At this point, it is premature to speculate on possible competitive impacts.

6. Regional air carriers are extremely important to states represented by many senators on this subcommittee. I am concerned that budgetary constraints within the FAA will adversely affect service to states such as South Dakota. I am also concerned about fees eventually being cited as another cost factor to rationalize cuts in service.
 - a) What impact do you anticipate proposed user fees would have on your affiliated regional carriers?

POST HEARING QUESTIONS FOR THE RECORD
SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
HEARING ON S. 1239, FAA REFORM
OCTOBER 12, 1995

SUBMITTED BY SENATOR JOHN MCCAIN
TO MR. REX MCCLELLAND, SENIOR VICE PRESIDENT CORPORATE SERVICES,
DELTA AIR LINES, INC., HARTSFIELD INTERNATIONAL AIRPORT, ATLANTA,
GEORGIA 30320

1. There is a widespread belief the general aviation community does not pay its fair share in user taxes compared to services it is provided, particularly with respect to business jets.
 - a) Do you believe this to be true? And, what support do you have for your position?
 - b) Assuming the FAA does need more money in the future to provide its current level of services, should the general aviation community pay more?

Cost allocation studies conducted by CBO and FAA have conclusively demonstrated that general aviation and business aviation do not pay their fair share.

One of the fundamental principles of a user financed system must be that all segments of the system pay their fair share. If the Congress determines that it is in the public interest that any segment not be required to pay their fully allocated costs, the Congress must appropriate those funds. Classes of users should not subsidize other classes or be penalized for public policy determinations.

2. What is your response to the suggestion the current excise taxes should be raised as a funding solution if the FAA will indeed face shortfalls in the future?

We do not support raising the current excise taxes. We already pay more than our fair share of the FAA's costs.

3. I understand many air carriers believe the European user fee systems are flawed. Do you believe air carrier participation in the creation of user fees, as provided for in S. 1239, would prevent the negative aspects of foreign fee systems from arising in a U.S. system?

One of Delta's concerns with regard to the establishment of domestic or foreign user fees is that they must be non-discriminatory and transparent. All user charges should be established in consultation with users and should comply with ICAO principles. To the extent that S. 1239 complies with these requirements, Delta

believes that S. 1239 would alleviate some of the negative aspects we have encountered with foreign user systems.

4. What are the potential benefits to air carriers if the FAA is operated in a more business-like manner with direct aviation community input?

Delta incurs over \$250 million in additional annual operating costs because of the inability of the air traffic control system to efficiently accommodate our operations. If we fail to achieve reform now, the delays and costs attributable to inefficiencies will worsen and the costs to Delta will rise dramatically.

As users and stakeholders, the input opportunity created by the MAC will undoubtedly enhance communication and coordination on technical matters and favorably influence the operational efficiency of the system.

5. What specific changes can you offer to improve this bill?

We appreciate your consideration of our concerns and suggestions. We have submitted suggestions to your staff – many of which have been incorporated in the bill. We would like to specifically mention one suggestion submitted for consideration – an amendment to Section 304 which would ensure that no segment of users would pay more than their allocated costs of the system. We look forward to working closely with you and your staff as the bill moves through the process.

6. I understand that air carriers are generally opposed to paying any more money through any form of tax or fee. But wouldn't your company be willing to spend a little more in the short-term to save itself from the rising long-term costs that an underfunded and inefficient FAA would effectively impose on your company in the future?

We are open minded to an approach which can clearly demonstrate that quantifiable benefits will result from added investment. In order to even consider an increase, a thorough review of FAA costs and cost allocation must be completed and we must be absolutely sure that ultimately cost savings and added efficiencies will accrue to the carriers.

7. What might happen to air carriers if the FAA doesn't get sufficient resources in future years?

As noted in Question 4, Delta incurs over \$250 million in additional annual operating costs because of the inability of the air traffic control system to efficiently

accommodate our operations. If we fail to achieve reform now, the delays and costs attributable to inefficiencies will worsen and the costs to Delta will rise dramatically.

8. How is the ATC system inefficient? How much of the inefficiencies are attributable to FAA's management of the system and how much to other factors?

See Question 9

9. What changes would you make to the current ATC system? How would these changes make the system more efficient? Would FAA need to be restructured in order to accomplish such changes?

We could provide the Committee with a specific list of operational concerns; however, we believe that many of these problems would be rectified with some fundamental changes to how FAA develops and provides ATC services. Delta believes that the system would be more efficient and cost less if the users/customers of the system had more input into the operation of ATC. We are convinced that the ATC "production line" would operate more efficiently if there were more partnership between the FAA and users on operational decisions. Users must become an integral part of the planning process.

10. Are you supportive of the fees under Section 303 related to certification, security, etc..... and under Section 304 related to ATC services? If not, what fees would you support?

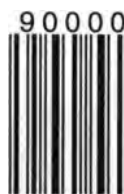
While Delta generally supports the intent of the financing mechanisms of the bill, we want to work with you to ensure that the legislation will not create revenue incentives for regulatory activity and will address the subsidy which airlines currently provide to other users of the system.

11. Do you believe that the FAA should continue to receive general fund support or are you in favor of the agency being funded entirely by its users, including government users?

As noted in our testimony, we believe that one of the inherent strengths of S. 1239 is its attempt to more fairly allocate the cost for FAA activities among all users. It is time to eliminate the subsidy received by certain classes of users under the present financing system. If Congress believes that certain users cannot or should not pay their fair share, then the government must assume the responsibility for such a public policy decision.



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